

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 3 OF 2016

PETITIONER: Dr. Neeta Ajay Keshwani,
Aged about 43 yeas, Occ. Medical Practitioner,
R/o. C/o. Keshwani Hospital,
Saraswat Chowk, Yavatmal,
Tahsil and District Yavatmal

...VERSUS...

RESPONDENTS: 1] Ravindra Dinkarao Pande,
(alleged District Appropriate Authority),
R.M.O. General Hospital, Yavatmal,
Tahsil and District Yavatmal

2] State of Maharashtra,
represented through Public Prosecutor,
Yavatmal.

Mr. A.A.Naik, Advocate for petitioner.
Mr. M.B.Ghodeswar, APP for respondents

CORAM : AVINASH G. GHAROTE, J.
DATE : 24/02/2022.

1] Heard Mr. Naik, learned counsel for the petitioner and
learned APP for the respondents.

2] In the instant case, the complaint has been filed by
Respondent No.1 against the petitioner under Section 28 of the
PCPNDT Act, claiming himself to be the appropriate authority, which

is the position as reflected from perusal of the complaint's paras 1 and 2 (page 23).

3] It is conceded by Mr. Ghodeswar, learned APP that there is no notification published in the official gazette under Section 17(2) PCPNDT Act, whereby the respondent no.1 could claim to have been appointed as appropriate authority. However, reliance is placed upon an authorization dated 7.6.2012 issued by the Civil Surgeon, Yavatmal, who claims himself to be the appropriate authority, to have authorized the Respondent No. 1 to take appropriate action under the PCPNDT Act in the present matter. He therefore submits that the authorization dated 7.6.2012 would inure to the benefit of the Respondent 1 and therefore the complaint would be maintainable.

4] Mr. Naik, learned counsel for the petitioner in rebuttal contends that Respondent No. 1 cannot fall back on the authorization dated 7.6.2012 for the reason that the complaint is not based upon the said authorization, but is on the premise that the Respondent No.1 himself is the appropriate authority. He contends that the provisions of Section 28 of the PCPNDT Act have to be

strictly construed, apart from which the complaint itself has to demonstrate the authority of the person filing complaint and in case such authority is absent, the complaint cannot be held to be maintainable in law.

5] It is not disputed that the Respondent No.1 in the matter of filing the complaint dated 29.6.2012 has portrayed himself as the appropriate authority. Admittedly, there is no gazette notification under Section 17(2) of the PCPNDT Act appointing the Respondent No.1 as the appropriate authority. It is therefore apt that the complaint has to be construed on the basis of the averments made therein and any external material cannot be taken aid of for the purpose of determining whether the complaint was maintainable as the offences under the PCPNDT Act are technical in nature, violation of which invites penal consequences and therefore, the provisions will have to be strictly construed, in view of which since the complaint itself is based upon an incorrect premise of the complainant/Respondent No.1 being the appropriate authority, the same cannot be permitted to be continued, as admittedly the Respondent No.1/complainant is not an appropriate authority, for which reason the reliance placed by the learned Sessions Court upon

the communication dated 7.6.2012 for the purpose of filing the complaint appears to be clearly misplaced.

6] This being the position, the order dated 22.7.2014 passed by the learned JMFC rejecting the application for discharge and the judgment of the learned Sessions Court dated 8.10.2015 dismissing the revision are hereby quashed and set aside and the application below Exh. 139 is hereby allowed.

7] The petition is allowed in above terms. Rule accordingly.
No costs.

JUDGE

Rvjalit