

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

CRIMINAL WRIT PETITION NO. 426 OF 2016

PETITIONER: Dr. Rajendra Vitthalrao Prakashey,
Aged about 59 years, Occ. Medical Practitioner,
R/o. 20, Hindustan Colony, Wardha Road,
Nagpur.

...VERSUS...

RESPONDENTS: 1] Dr. Savita Ranjit Meshram,
Appropriate Authority appointed under
PCPNDT Act, 1994, Health Officer (M),
Nagpur Municipal Corporation,
Civil Station, Civil Lines, Nagpur.

2] State of Maharashtra,
through Police Station Officer,
Police Station Dhantoli, Nagpur.

AND

CRIMINAL WRIT PETITION NO. 5 OF 2016

PETITIONER: Dr. Vilas Prabhakar Kanikdaley,
Aged Major, Occ. Medical Practitioner,
R/o. Wazalwar Colony, Opp. Dharampeth
High School, North Ambazari Road,
Nagpur.

...VERSUS...

RESPONDENTS: 1] State of Maharashtra,
through PSO, Police Station Sitaburdi,
Nagpur.

2] Dr. Savita Ranjit Meshram,
Health Officer, Nagpur Municipal
Corporation, Civil Lines, Nagpur.

Mr. A.A.Naik, Advocate for petitioners in both the petitions.
Mr. J.B.Kasat, Advocate for Respondent No. 1 in WP No.426/2016 and
for Respondent No. 2 in WP No.5/2016
Mr. I. Damle, APP for Respondent No.2/State in WP No. 426/2015 and
Mr. M.B.Ghodeswar, APP for respondent No.1/State in WP No. 5/2016

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

COMMON JUDGMENT

1] Heard Mr. Naik, learned counsel for the petitioners, Mr. J.B.Kasat for respondents and learned APP for the State.

2] The petitioner in Writ Petition No. 426/2016 is being prosecuted for violation of Sections 19(4), 23(1) and Rules 4 (ii), 9(1)(iv) and 13 of PCPNDT Act and Rules and petitioner in Writ Petition No. 5/2016 is being prosecuted for violation of Section 28 of Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 2003. The Respondent No.1 in Writ Petition No. 426/2016 and Respondent No.2 in Writ Petition No. 5/2016 had lodged complaints against the petitioners for the aforesaid violation, which are registered as Criminal Complaint Case Nos. 17664/2011 & 25458/2011 respectively by the learned JMFC, who having issued process on 14.11.2011, the same was challenged by

the petitioners in Criminal Revision Application Nos. 284/2012 and 43/2014 respectively before the learned Sessions Court, who by the judgments dated 2.2.2016 and 24.11.2015 respectively has dismissed the same, resulting in the present petitions.

3] The short point involved is whether the Respondent No.1 in W.P.No.426/2016 and Respondent No.2 in W.P.No. 5/2016 who is the complainant was legally competent to file the complaint under Section 28 of the PCPNDT Act. It would be material to note that Section 28(1) of the said Act is couched in a negative language and mandates that no Court shall take cognizance of an offence under this Act, except on a complaint made by (a) the appropriate authority concerned or (b) any officer authorized in this behalf by the State/Central Govt. and (c) any officer authorized by the appropriate authority. It is contended that the complainant/Respondent was not the appropriate authority, as for the purpose of being appointed as an appropriate authority under Section 17(2) of the PCPNDT Act, there has to be gazette notification published in the official gazette in this regard.

4] Mr. Kasat, learned counsel for Respondent No. 1 in W.P.No. 426/2016 and for Respondent No. 2 in W.P.No. 5/2016 fairly admits that there is no such gazette notification published in the official gazette by which Respondent/complainant can be said to have been appointed as the appropriate authority. The notification dated 13.10.2011 (page 19) does not, according to him relate to the appointment of Respondent No.1 as an appropriate authority and therefore it is of no use. He contends that only on the basis of notification dated 11.9.1997, as it stood modified by the notification dated 9.12.1997, the complaint has been filed. It is however, material to note that these two notifications would be applicable only to a place where there is no Civil Surgeon. Admittedly, the present matters relate to Nagpur City and it is not disputed by Mr. Kasat, learned counsel for the respondent that at the relevant time a Civil Surgeon was duly appointed and functioning. The position is no more *res integra*, but is covered by the decision of the Division Bench at the Aurangabad Bench of this Court in Criminal Writ Petition No. 250/2015 (**Dr. Paayal Shreekant Choube ..vrs.. State of Maharashtra and others**) decided on 16.10.2015, in which it has been categorically held that unless the complaint under Section 28 of the

PCPNDT Act is filed by the person as required by Section 28(1)(a), the Court shall not take cognizance of the same.

5] Since the only question is about the authority of Respondent/Complainant in filing the complaint and it is admitted that there is no notification appointing Respondent No.1 as an appropriate authority under Section 17(2) of the PCPNDT Act, nor is there any authorization in favour of Respondent No.1 as required by Section 28(1)(a) of the said Act, the complaint lodged by the Respondent No.1 clearly should not have been taken cognizance of by the learned JMFC. The learned Sessions Court in its impugned judgment clearly ignores this position and misdirects itself in relying upon the notification dated 13.10.2011, which merely relates to appointment of a Task Force and nothing else, considering which the same cannot be sustained. It is therefore quashed and set aside. For the reasons recorded above, it is held that the complaints filed by Respondent/complaint are without the authority as contemplated by Section 28(1)(a) of the PCPNDT Act and could not have been taken cognizance of by the learned JMFC.

6] The petitions are accordingly allowed. The judgments of the Sessions Court dated 2.6.2016 impugned in WP No. 426/2016 and dated 24.11.2015 impugned in WP No. 5/2016, as well the order dated 14.11.2011 passed the learned JMFC issuing process is hereby quashed and set aside and the complaints filed by Respondent/complainant are dismissed.

7] The petitions are allowed in above terms. Rule accordingly. No costs.

JUDGE

Rvjalit