

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2022	Pronounced on : 05.07.2022
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Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.2709 of 2019
& Crl.M.P.No.1731 of 2019

Dr.Dhamayanthi Rajkumar (F/A 55 years),
W/o.Sivarajkumar,
Sree Mathurra Hospital,
Dr.Varadharajalu Street,
Jothi Nagar, Attur,
Salem - 636 102

...Petitioner/Accused

/versus/

1.The State Rep., by
Inspector of Police,
Attur Police Station,
Salem District.
(Crime No.163 of 2018).

...1st respondent

2.Dr.K.Kannan, (M/A 55 years),
Blood Bank Medical Officer,
Chief Civil Surgeon Medical Officer Incharge,
Govt.Hospital, Attur,
Salem District.

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and to quash the First Information Report in Crime No.163 of 2018 on the file of the Inspector of Police, Attur Police Station, Salem District as against the petitioner and pass order.

For Petitioner : Mr.K.R.Ramesh Kumar

For R1 : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

For R2 : No appearance

O R D E R

The accused in Crime No.163/2018, seeks quash of the F.I.R. registered against her on the ground that Pre Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 hereinafter called as the "Act", excludes investigation by the Police under Chapter XII of Cr.P.C. No Court can take cognizance of offence under this Act except on a complaint in writing filed by Appropriate Authority authorised by the Central Government or the State Government as the case may be. Therefore, the 1st Respondent who has registered the F.I.R on the complaint given by the 2nd respondent, cannot investigate and file final report, when he is not authorised to file complaint as per Section 28 of the Act.

2. The F.I.R impugned is based on the information dated 19/04/2018 given by Blood Bank Manager, Medical Officer (In-charge), Government Hospital, Attur, Salem, to the Inspector of Police, Attur Police Station (the 2nd respondent).

3. The said information reads as below:-

The Director of Medical and Rural Health Service Department at Chennai received a complaint that Dr.Dhamayandhi Rajkumar is conducting sex selection test to the pregnant patients at her hospital by name Shree Mathurra Hospital at Varadharajaulu Street, Attur and informing the patients about the sex of the womb. Consequently, the Officials from the Directorate of Medical and Rural Health Service Department conducted decoy operation. The decoy along with one Satish visited the said Hospital at about 2.30 p.m. The Hospital staff collected Rs.6000/- for the sex selection test and Dr.Dhamayanthi between 2.30 pm and 3.00 p.m conducted scan of the decoy in her room situated at first floor of the hospital. After test, she informed the sex of the child in the womb is 'Male'. Thereafter, on intimation from the decoy witness Satish, the team Headed by the Medical Officer (in-charge), Government Hospital, Attur inspected the Hospital and found a Assembled Scan Machine (China made), without any license for the Government and a Laptop given under the Chief Minister Scheme (free of cost to the students) and a scan machine - Probe was noticed. Pregnant ladies in the room of Dr.Dhamayandhi informed them they are waiting for the sex selection test. The statements of those ladies were recorded. The marked currency of Rs.6,000/- used for the decoy operation was recovered in the presence of witnesses.

4. The seized materials along with the above written complaint was produced before the 1st respondent police for action under Sections 23 of the Act. The 1st respondent registered F.I.R in Crime No.163/2018. Forwarded the copy of

the complaint and F.I.R to the Judicial Magistrate-I, Attur and took up the investigation. Arrested Dr.Dhamayandhi Rajkumar and produced her before the Judicial Magistrate and sought for remand. Accordingly, she was remanded to judicial custody and later released on bail.

5. The above said action of the first respondent police, viz., registering the F.I.R and taking up the investigation is under challenge in this quash petition on the ground extracted in the introduction part of this order.

6. The PCPNDT Act, was enacted with the object of curbing the menace of female foeticide by abusing the pre natal diagnostic techniques. It prohibits use of diagnostic techniques except for the deducting genetic abnormalities or metabolic disorders or chromosomal abnormality or certain congenital malformations or sex - linked disorders. It specifically prohibits misuse of the technique to find the sex of the child in womb and communicate to the pregnant woman or her relatives or any other persons the sex of the foetus by words, signs or in any other manner. (Section 5(2) of the Act).

7. This Act under Chapter II, regulates the genetic counselling centres, Genetic Laboratories and Genetic Clinics. Whereas Chapter III, regulates the pre-natal diagnostic techniques. Chapter IV provides for Central and State Supervisory Boards to perform the functions envisaged in Section 16 and 16 A of the Act respectively. Section 17 under Chapter V deals with Appropriate Authority and Advisory Committee. Section 17(4) (c) gives power to the Appropriate Authority to investigate complaints of breach of the provisions of this Act or rules made thereunder and to take immediate action. By Act 14 of 2003 clause (e) was inserted to sub section (4) of Section 17. Since clauses (c) and (e) of Section 17 (4) are relevant to this case, same is extracted below for reference.

Section 17 of Prohibition of Sex Selection Act, 1994:-

Section 17. Appropriate Authority and Advisory Committee.-

(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union Territories for the purposes of this Act.

(2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex

determination leading to female foeticide.

(3)

(4) The Appropriate Authority shall have the following functions, namely:-

(a)

(b)

(c). to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action; and

(d)

(e). to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;

Under Section 17-A of the Act, the following powers are conferred to the Appropriate Authority:-

"17-A. Powers of Appropriate Authorities.-

The Appropriate Authority shall have the powers in respect of the following matters, namely:-

(a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;

(b) production of any document or material object relating to clause (a);

(c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and

(d) any other matter which may be prescribed."

Section 30 of the Act empowers the Appropriate Authority or any other officer authorised for that purpose, to search and seize records if he has reasons to believe that offence under the Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place.

Section 27 of the Act classifies every offence under this Act as Cognizable, non-bailable and non - compoundable and Section 23 of the Act prescribes the offences and penalties.

Section 28 of the Act mandates that the Court cannot take cognizance of the offence under this Act except on a complaint made by:-

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than [fifteen] days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.-For the purpose of this clause, "person" includes a social organisation.

11. In the above background of the frame of legislation, it is contented by the Learned Counsel for the petitioner that, the power to investigate any breach of provisions of this Act and to take appropriate legal action under this Act is exclusively vest with the Appropriate Authority only. Therefore, the investigation by the Police, who is not an Appropriate Authority notified as per Section 17 of the Act by the Central or State Government under notification cannot register F.I.R and investigate. To emphasise the said proposition, the Learned Counsel for the petitioner also refer Section 28 of the Act, which restricts the power of the Court to take cognizance of the offence unless it is a complaint either by a). Appropriate Authority or b). Any Officer authorised in this behalf by the State or Central Government or c). a person who has given notice for not less than 15 days in the manner prescribed, to the Appropriate Authority of the alleged offence and of his intention to make a complaint to the Court. In the instant case, the F.I.R which is taken up for investigation by the police, on completion of the investigation, cannot be taken cognizance by the Court since the Investigating Officer is not an Appropriate Authority or Authorised Officer under notification of Central or State Government.

12. The Learned Counsel for the petitioner relies upon the following judgments to buttress his submissions:

1. Centre for Enquiry into Health & Allied Themes (Cehat) and Others -vs- Union of India and another reported in (2003) 8 SCC 398.

2. Dr.Amritlal Rohledar S/o. Late Balveer @ Kari Rohledar -vs- State of Chhattisgarh, through its Secretary, Health & Family Welfare and others reported in 2019 SCC Online Chh 137

3. Dr.C.Kannan -vs- The State Represented by Inspector of Police and others dated 27.07.2021.

4. Dr.M.Selvamba Rajkumar -vs- The State Rep. by Inspector of Police and others order dated 25.10.2021.

5. Dr.K.B.Vidhyasankar -vs- The State rep. by Inspector of Police, Sooramangalam Police Station order dated 07.02.2022.

13. The Learned Government Advocate (Crl.Side) Mr.Suganthan for the 1st respondent submitted that, the complainant in this case is the Blood Bank Manager, a Chief Civil Surgeon and Medical Officer (in-charge) of Government Hospital at Attur. In G.O.Ms.No.308 dated 24/12/2013, the State Government in exercise of its power under section 17(2) of the Act, revised its earlier order and had restored the powers of the Joint Directors and Senior Civil Surgeon/Medical Officers of each Taluk Hospital in the State as Appropriate Authority conferred under G.O.(Ms).No.431, Health Department dated 31/07/1998. Thus, the defacto complainant as Senior Civil Surgeon/Medical Officer of Attur Government Hospital is an Appropriate Authority appointed under notification. The search and seizure of records was done under his supervision as per the power conferred under Section 30 of the Act. Thereafter, the matter reported to the police in writing for further course of investigation since the offences are cognizable.

14. As far as challenge to the power of police to register F.I.R and investigate, the Learned Government Advocate (Crl.Side) for the respondent submitted that, there is no bar for the police to investigate a cognizable offence in view of Section 4 & 5 of the Cr.P.C. The power conferred on the Appropriate Authority to investigate under section 17(4)(c) of the Act is not an exclusive power. The power of the Police to investigate a cognizable offence is not restrained anywhere in the Act. The Section 28 of the Act is for the Court while taking cognizance of the complaint for trial. That stage has not reached. The registration of F.I.R and the investigation done on a cognizable offence therefore, is not vitiated for the reasons stated in the petition.

15. To buttress his submission, the Learned Government Advocate (Crl.Side) for the respondent rely upon the judgment dated 20/01/2022 by Hon'ble Punjab and Haryana High Court in Dr.Aparna Singhal -vs- State of Haryana and another reported in MANU/PH/0066/2022.

16. The facts of the case cited, is almost similar to the facts of the instant case under consideration.

In this judgment, the Learned Judge has extensively examined the provisions of the Act and referring the earlier Division Bench judgment of that Court in Hardeep Singh's case which formulated 3 questions and answered, held that, the F.I.R registered on the complaint given by District Appropriate Authority can be investigated by the Police. However, on completion of investigation, the police should submit the report to the District Appropriate Authority, thereafter a criminal complaint along with the report shall be filed before the Judicial Magistrate concern as per Section 28 of the Act.

17. For completion, it is appropriate to mention the three questions framed by the Division Bench of the Punjab Haryana High Court in Hardeep Singh's case and its answer after exposition of law.

"The questions referred were:-

1. Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?

2. Whether the report under Section 173 Cr.P.C. along with the complaint of an Appropriate Authority can be filed to the Court?

3. Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?

The Division Bench answered the questions as under:

In the circumstances, the questions as formulated in the reference are answered in the following manner, that:-

(1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however,

cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.

(2) A report under Section 173 Cr.P.C. along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.

18. The perusal of the judgement rendered by Single Judge of the Chhattisgarh High Court in Dr.Amritlal Rohledar case (cited supra) relied by the Counsel for the petitioner, I find the Learned Judge has taken a contra view. To substantiate his disagreement, judgments of Orissa High Court in Ramesh Chandra Naik and others -vs- State of Orissa reported in MANU/OR/0172/2018 and Judgement of High Court of Chhattisgarh in Dr.Amritlal Rohledar -vs- State of Chhattisgarh reported in 2019 SCC Online Chh 137 relied the learned Judge in Amritlal case has concluded as below:-

"52. Reverting finally to the facts of the present case, it is quite vivid that in the present case, offence under Section 23 (1) of the PCPNDT Act is cognizable and non-compoundable offence, but complaint can be filed in the manner provided under Section 28 of the Act and the entire procedure for scientific investigation and filing of complaint has been prescribed under Sections 29 and 30 of the PCPNDT Act and the Rules of 1996. As such, by virtue of the provisions of Section 4 read with Section 5 of the CrPC, the provisions of the CrPC shall stand excluded to the extent indicated hereinabove and the offence under the PCPNDT Act has to be investigated only by the appropriate authority appointed under Section 17(2) and therefore offence under the PCPNDT Act cannot be investigated under the provisions of the CrPC by registering FIR by the Station House Officer of Police Station concerned. Therefore, no first information report can be lodged against the

medical practitioner including the petitioner herein under Section 23 of the PCPNDT Act for the alleged offence said to have been committed under the PCPNDT Act.

53. Accordingly, the FIR (Annexure P-1) registered against the petitioner for the offence punishable under Section 23(1) of the PCPNDT Act under Crime No. 308/2019 at Police Station Saraipali, District Mahasamund, and further investigation (if any) cannot continue for a moment and is hereby quashed being in violation of the provisions contained in Section 28(1)(a) of the PCPNDT Act read with Sections 4 & 5 of the CrPC and following the binding principles of law enunciated by their Lordships of the Supreme Court in Bhajan Lal. However, liberty is reserved in favour of the appropriate authority to proceed against the petitioner in accordance with the PCPNDT Act and the Rules made thereunder and if complaint as provided in Section 28 of the PCPNDT Act is filed before the jurisdictional criminal Court, the procedure laid down in Chapter XV of the CrPC has to be followed before issuance of process against the person concerned."

19. After considering different views expressed by different High Courts, the issue boil down to the point whether Sections 4 & 5 of Cr.P.C and Sections 29 & 30 of Act 1994, will exclude or divest the general power of the police to investigate offence under this Act which is cognizable offence.

Section 4(2) of Criminal Procedure Code envisages:-

4. Trial of offences under the Indian Penal Code and other laws-

(1).....

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.
(Emphasis added)

Section 5 of Criminal Procedure Code:-

This Section is the Saving clause which reads as :-

"Nothing contained in this Code shall,

in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."(Emphasis added)

20. The judgment of Chhattisgarh High Court in Dr.Amritlal Rohledar case cited supra, has viewed that Sections 29 & 30 of the Act and the Rules framed thereunder excludes police from investigation. However, on reading the Act, this Court nowhere finds such exclusion or any special form of procedure prescribed for investigation. What is conferred under the provisions of the Act mentioned above is investigation power on appropriate authority including power to search and seizure of record. Conferment of power of investigation to the appropriate authority, will not automatically take away the power of investigation of the cognizable offence mentioned in PCPNDT Act by the Police.

21. The spirit of Sections 4 & 5 of Cr.P.C is precisely to that effect that all offence under law other than Indian Penal Code also to be investigated, enquired and tried following the procedure envisages under the Code except in case of alternate procedure provided under the code excluding the police from investigating or applying the code.

22. To be also noted, the Act does not confer power of arrest to the Appropriate Authority or the Authorised Authority, though the offence are classified as cognizable offences. Under Section 27 of the Act. If the police is prohibited from registering the F.I.R or to investigate, if in case of any imminent necessity to arrest a person to prevent commission of any offence under this Act, no authority can do it and the offence cannot be prevented but only by punished after commission. If this interpretation is allowed to stay, then the very object of the Act viz., preventing female foeticide will be defeated.

23. In the instant case itself, the information says, apart from the decoy, many more pregnant ladies were waiting for the sex selection test. If the accused not arrested any of the patient on knowing the sex might have opted for termination of pregnancy and would have avail the facilities in that hospital.

24. Cognizance of an offence is defined under Section 2(c) of Cr.P.C., which reads as below:-

2. Definitions.- In this Code, unless the context otherwise requires,-

(a).....

(b).....

(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

25. It is pertinent to note, taking cognizance of the offence for investigation and taking cognizance of offence for trial are two distinct stages of criminal justice system. While taking cognizance for investigation, there is no express bar for the police under this Act. However, for taking cognizance of the case for trial, there are restrictions for the Court. Therefore, when the offence is cognizable offence, when any information received by the police about any cognizable offence, they are bound to register F.I.R and proceed with the investigation. However, in this Act there is restriction for the Court to take cognizance of the case for trial and in such cases, the required condition for taking cognizance by the Court for trial has to be complied.

26. In opinion of this Court, the view expressed by Hon'ble Punjab and Haryana High Court in Dr.Aparna Singhal case cited supra, is more appropriate. Hence, following the said judgment, this Criminal Original Petition is disposed of.

27. The respondent police is directed to complete the investigation and on completion, shall forward a report to the 2nd respondent/Blood Bank Medical Officer, Chief Civil Surgeon Medical Officer, Government Hospital, Attur, Salem and he, in turn, shall present a complaint before the concern Judicial Magistrate as per Section 28 of the Act, along with the report received from the police, for further proceedings. With this direction, the Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

bsm

To,

- 1.The Inspector of Police,
Attur Police Station, Salem District.
- 2.The Blood Bank Medical Officer,
Chief Civil Surgeon Medical Officer Incharge,
Govt.Hospital, Attur, Salem District.
- 3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.K.R.Ramesh Kumar, Advocate SR. No. 42850

Crl.O.P.No.2709 of 2019
& Crl.M.P.No.1731 of 2019

PL (CO)
PR (22/07/2022)