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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 7.2.2022.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Original Petition No.25384 of 2021
and
Crl.M.P.No.14060 of 2021

Dr.K.B.Vidhyasankar

.. Petitioner

vs.

1. The State rep by
Inspector of Police,
Sooramangalam Police Station,
Salem-12.

2. The Chief Medical Officer,
Government Hospital, Omalur,
Salem District-12.

.. Respondents

Criminal Original Petition filed under Section 482 Crl.P.C.
to call for the records and quash the proceedings in C.C.No.873
of 2019 on the file of Judicial Magistrate II, Salem.

For Petitioner : Mr.P.Tamilavel

For Respondents : Mr.A.Gokulakrishnan, APP

ORDER

The Criminal Original Petition has been filed seeking to
quash the proceedings in C.C.No.873 of 2019 on the file of
Judicial Magistrate II, Salem.

2. Brief facts of the case:-

The de facto complainant/second respondent has lodged a
complaint on 9.11.2018 before the first respondent and based on
the secret information and the complaint of the second
respondent, the first respondent inspected the Rajam Hospital
run by the petitioner on 9.11.2018 and during the inspection, it
was found that the petitioner's hospital had not maintained the



records as required under Section 17 of 4(c) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Further, during the inspection, it was also found that the petitioner had not saved the images of the scan of the customers. Further, it was found that the petitioner's Hospital had not maintained the bills for the period from 1.11.2018 to 8.11.2018 and thereby the first respondent had registered a case in Crime No.1087 of 2018 dated 9.11.2018 under Section 23(1) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Subsequently, after completion of investigation, the first respondent has filed charge sheet before the learned Judicial Magistrate II, Salem which was taken in file as C.C.No.873 of 2019. The present petition has been filed challenging the proceedings in C.C.No.873 of 2019.

3. Learned counsel appearing for the petitioner would submit that the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 is a special Act and as per Section 28 of the above Act, no court shall take cognizance of an offence except on a complaint made by the appropriate authority concerned or any officer authorised in this behalf by the Central or State Government, and as far as this case is concerned, the appropriate authority is the second respondent, whereas, the Trial Court, ignoring the provisions, has taken up the final report filed by the first respondent.

4. Learned Additional Public Prosecutor would fairly admit that as per Section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 only a private complaint has to be filed by the authorised officer, however, he would submit that liberty may be granted to the authorised officer to initiate proceedings against the petitioner.

5. Heard the learned counsel appearing for the parties.

6. The relevant provision viz., Section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 relied by the learned counsel for the petitioner reads as under:-

"28. Cognizance of offences.

1. No court shall take cognizance of an offence under this Act except on a complaint made by-

(a) the Appropriate Authority concerned, or



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any officer authorised in this behalf by the Central Government or 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.

2. No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

3. Where a complaint has been made under clause (b) of subsection (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person."

7. Therefore, it is clear that as per section 28 of the said Act, a complaint has to be filed by the Authorised Officer before the court whereas, in this case, the first respondent has filed final report based on which the Magistrate has taken cognizance. In view of the same, the proceedings in C.C.No.873 of 2019 is liable to be set aside and accordingly, it is set aside. However, liberty is granted to the second respondent to initiate appropriate proceedings in accordance with law. The Criminal Original Petition is disposed of. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Judicial Magistrate II,
Salem.



2. Do-Through,
The Chief Judicial Magistrate,
Salem.

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3. Inspector of Police,
Sooramangalam Police Station,
Salem-12.

4. The Chief Medical Officer,
Government Hospital, Omalur,
Salem District-12.

5. The Additional Public Prosecutor,
High Court, Madras.

++cc to Mr.P.Tamilavel, Advocate, S.R.No.7881 (01/03/2022)

Crl. Original Petition No.25384/2021
and Crl.M.P.No.14060/2021

PL(CO)
SU(17/02/2022)