

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4634-2020

Reserved on : May 24, 2022

Date of Pronouncement : June 01, 2022

Anil Bansal and another

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Ankur Bansal, Advocate and
Ms. Aashna Aggarwal, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in the present petition is for quashing of FIR No.551 dated 29.11.2018, registered at Police Station Sector 40, Gurgaon, District Gurgaon, under Sections 3, 4 and 5 of the Medical Termination of Pregnancy Act, 1971 (for short 'MTP'); Sections 18(c), 18-A, 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 and Section 120-B, 312 and 511 (subsequently added) of Indian Penal Code and all the consequential proceedings arising therefrom.

As per the FIR registered at the instance of Dr. Naval Kishore, it is stated that an information is received by Civil Surgeon,

Gurugram wherein the informer Pawan informed that one Dr. Ravi is involved in medical termination of pregnancy. Civil Surgeon asked him to go ahead and strike a deal for conducting medical termination of pregnancy. Pawan called Dr. Ravi that his wife is pregnant for the last 4/5 months and wants termination of pregnancy. Dr. Ravi demanded Rs.45,000/- and on negotiation, the amount was settled at Rs.40,000/-. Thereafter, Dr. Ravi told him to go to Sector 5 and contact Dr. Bansal, i.e. petitioner No.2, who further informed Pawan to come to Gurugram. Thereafter, Pawan told Civil Surgeon office in this regard and a team was constituted, in which Dr. Naval Kishore, Deputy Civil Surgeon-cum-PNDT Nodal Officer, was the incharge and currency notes of Rs.40,000/- were given to the docoy customer Puja and she along with Pawan went to Greenwood Health Centre, Sector 45, where Pawan gave Rs.40,000/- for termination of pregnancy and after giving money, he informed Dr. Naval Kishore. When the raiding party came and found that the patient was lying on the examination table and certain instruments were lying there. It is stated that the amount of Rs.40,000/- was recovered from petitioner No.1 Dr. Abha Bansal, who was not having valid registration under Medical Termination of Pregnancy Act, 1971.

Learned Senior Counsel for the petitioners has argued that both the petitioners are husband and wife and are well qualified doctors. Petitioner No.1 is holding a degree of General Physician (MD) since 1981 from Guru Nanak Dev University and he is registered with Haryana Medical Council as per the registration certificate (Annexures P2).

Similarly, petitioner No.2 Abha Aggarwal is also having a degree of Medicines and Surgery. She is registered with Punjab Medical Council, Chandigarh as well as Haryana Medical Council. Learned Senior Counsel further submits that vide letter (Annexure P4), on 19.10.1992, Civil Surgeon, Gurugram has granted approval of doctor and place (Nursing Home) for conducting the medical termination of pregnancy to petitioner No.2-Dr. Abha Bansal in City Hospital, DLF Colony, Mehrauli Road, Gurugram and later on, the present Greenwood Health Centre was also approved as a place of medical termination of pregnancy as per the approval letter dated 12.10.2017 (Annexure P5) issued by the Civil Surgeon, Gurugram. Learned Senior Counsel also submits that earlier a complaint case No.133/2017 dated 1.12.2017 titled as **District Appropriate Authority, Gurugram Vs. Smt. Usha** and another under Sections 3, 3A, 4, 5, 6, 29 and Rule 9 all punishable under Section 23 of the PC and PNDT Act was filed in which the petitioners were summoned vide order dated 4.12.2017. The petitioners challenged the same before this Court and vide order dated 24.2.2020, the said complaint was quashed by making the following observations :-

“After hearing learned counsel for the parties, I find merit in the present petition for the following reasons :-

- (a) A perusal of letter dated 12.9.2016 constituting a PNDT Team by the Chairman, DAA-cum-Civil Surgeon, Jhajjar, clearly shows that it is signed by two members and not by the third member

i.e. Member, DAA-cum-DPO(WCD), Jhajjar, therefore, it is not signed by a validly constituted District Appropriate Authority as per Section 17 of the PC @ PNDT Act.

- (b) Even a perusal of another order dated 12.9.2016 issued by Chairman, DAA-cum-Civil Surgeon, Gurugram, appointing a three member PNDT Team, shows that it was done under his sole signature and not by the other two members. This fact is not disputed in the reply affidavit of the Deputy Civil Surgeon-cum-PNDT Nodal Officer, Gurugram, therefore, in view of the judgment in **Dr. Ritu Prabhakar's case (supra)**, the whole procedure stands vitiated as the lapse on the part of both the District Appropriate Authorities is incurable defect.
- (c) Further, as per procedure prescribed under Section 30 of the PC & PNDT Act read with Rule 12, it is mandatory to provide the copies of spot and seizure memos, if prepared at the spot, to a persons from whom the recovery is effected, however, a perusal of the impugned complaint as well as the reply filed in Court, nowhere shows that this procedure was followed and a copy of the list prepared by the team was ever supplied to petitioner, though in para 7 of the complaint, it is stated that spot and seizure memos were prepared at the spot but a copy thereof was never supplied to the petitioner. This also vitiates the procedure adopted by the complainant.

- (d) As per provisions, the complaint is to be filed by the District Appropriate Authority, which consists of three members, whereas the impugned complaint has been filed by the District Nodal Officer. It is also held by the Court in **Ishwar Singh Yadav's case (supra)** that the District Appropriate Authority cannot delegate its powers, therefore, the procedure adopted by the District Appropriate Authority, Gurugram is totally illegal, which cannot be termed as a curable irregularity.
- (e) Therefore, in view of the well settled principles of law, when chances of conviction of petitioner are bleak, no purpose will be served to allow continuation of his prosecution.

31. Therefore, in view of the above discussion, the present petition is allowed and impugned complaint (Annexure P4) along with all the subsequent proceedings arising therefrom including summoning order dated 4.12.2017 (Annexure P5) is hereby quashed qua the petitioner."

Learned Senior Counsel has submitted that the complainant in the said complaint was also Dr. Naval Kishore, who has now got the present FIR registered on 29.11.2018.

Learned Senior Counsel has referred to the written statement filed by Dr. Naval Kishore-complainant in the aforesaid CRM-M18417 of 2018 to submit that on 26.11.2018 the reply was filed before

this Court during pendency of aforesaid petition and within two days, the present FIR has been registered on 29.11.2018.

Learned Senior Counsel has referred to the order dated 1.2.2018 in which petitioner No.2-Abha Bansal was granted bail on 1.12.2018 by the Court observing that from the contents of the FIR nothing is made out that any act of conducting the termination of pregnancy was done by the accused and she was not apprehended while conducting such process by the leading team. Learned Senior Counsel has further submitted that even subsequently when an application for cancellation of bail was filed, the same was also dismissed. Learned Senior Court also submits that even in the report submitted under Section 173 Cr.P.C., the only allegations are that the decoy patient was found lying on the examination table and some instruments used for medical termination of pregnancy (MTP Kit) was seized at the spot, the details of which are given in the report.

Learned Senior counsel also submit that from the report under Section 173 Cr.P.C., the only allegations against the petitioners are that on accepting Rs.40,000/- she has taken the decoy patient to examination table from where MTP kits were recovered.

It is submitted that the allegations in the FIR that petitioner- Abha Bansal was not authorised to conduct MTP on her Centre Greenwood Health Centre, Sector 40, Gurugram was not approved are patently wrong and against the record. It is further submitted that

another FIR No.326 dated 12.9.2016 under Sections 23, 3, 4, 5 and 6 of the PNDT Act at Police Station Sector 40, Gurgaon was registered against the petitioner in which the petitioner has filed CRM-M-6476-2017, which is also pending. Learned Senior Counsel for the petitioner has next argued that in fact Dr. Naval Kishore complainant due to professional jealousy and ill-will and enmity is harassing the petitioners as he has filed repeated prosecution against them. Learned Senior Counsel further submits that the investigation itself suggest that no procedure was initiated on the decoy patient and nothing has come that she was being prepared for performing the procedure of MTP. He further submits that no offence under Sections 3, 4, 5 of the MTP Act is made out. The relevant Sections are reproduced here-in-below :-

3. When pregnancies may be terminated by registered medical practitioners

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section(4), a pregnancy may be terminated by a registered medical practitioner, -

(a) Where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or

(b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioner are, of opinion, formed in good faith, that -

- (i) The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
- (ii) There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.

Explanation 1- Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section(2) account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having

attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), No pregnancy shall be terminated except with the consent of the pregnant woman.

4. Place where pregnancy may be terminated -

No termination of pregnancy shall be made in accordance with this Act at any place other than -

(a) A hospital established or maintained by Government, or

(b) A place for the time being approved for the purpose of this Act by Government.

5. Sections 3 and 4 when not to apply -

(1) The provisions of section 4, and so much of the provisions of sub-section(2)of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that determination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered

medical practitioners shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

Explanation-For the purposes of this section, so much of the provisions of clause (d) of section(2)as relate to the possession, by a registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.

Learned Senior counsel has next argued that since petitioner No.2 is a registered medical practitioner under the Act as defined under Section 2(d) read with Section Rule 4(b)(i) of the MTP Rules 2003, which reads as under :-

"4. Experience and training under clause (d) of Section 2 :-

For the purpose of clause (d) of section (2), a registered medical practitioner shall have one or more of the following experience or training in gynecology and obstetrics, namely;

(a) In the case of a medical practitioner, who was registered in a State Medical Register immediately before the commencement of the Act, experience in the practice of gynecology and obstetrics for a period of not less than three years;

(b) In the case of a medical practitioner, who is registered in a State Medical Register:-

(i) if he has completed six months of house surgency in gynecology and obstetrics; or

- (ii) unless the following facilities are provided therein, if he had experience at any hospital for a period of not less than one year in the practice of obstetrics and gynaecology ; or
- (c) if he has assisted a registered medical practitioner in the performance of twenty-five cases of medical termination of pregnancy of which at least five have been performed independently, in a hospital established or maintained or a training institute approved for this purpose by the government.
 - (i) This training would enable the Registered Medical Practitioner (RMP) to do only 1st Trimester termination (up to 12 weeks of gestation).
 - (ii) For terminations up to twenty weeks the experience or training as prescribed under sub rules (a), (b) and(d) shall apply.
- (d) In case of a medical practitioner who has been registered in a State Medical Register and who holds a post-graduate degree or diploma in gynecology and obstetrics, the experience or training gained during the course of such degree or diploma.”

It is stated that the petitioner No.2 is fully competent under the Rules being a registered medical practitioner under the MTP Act and the clinic was also approved under Rule 5 of the MTP Act, therefore, no offence under the 4 of the MTP Act is made out. Learned Senior Counsel submits that petitioner No.2 is registered medical practitioner under Section 2(d) of the MTP Act and her Centre was registered under Section 4 of the MTP Act, therefore, no alleged MTP has taken place as the allegations itself are that an attempt was made by the petitioner,

then no offence against the petitioner is made out for contravention of the Section 5 of the MTP Act and FIR is liable to be quashed.

It is next argued by the learned Senior Counsel that even from the bare perusal of the FIR, no offence under Section 18(a), 18(c) of Drugs and Cosmetics Act, 1940 are made out.

Learned Senior Counsel has further argued that no FIR for violation of offence under Section 18(c) and 18(a) and 27(b) (2) and Section 28 of the Drugs and Cosmetics Act is maintainable. Learned Senior Counsel has further submitted that even under Section 18(c) of the DCA Act, no offence is made out as it relates to sale and distribution of drugs under a license under the DCA Act. Section 18 of the DCA Act reads as under :-

“S.18. Prohibition of manufacture and sale of certain drugs and cosmetics – From such date as may be fixed by the State Government by Notification in the Official Gazettee in this behalf, no person shall himself or by any other person on his behalf-

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(c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under and in accordance with the conditions of, a licence issued for such purpose under this Chapter.

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of

small quantities of any drug for the purpose of examination, test or analysis.”

It is further submitted that there is no allegation that petitioner was dealing in sale and distribution of drugs from their centre and it is not the case that during investigation any drug was found which was meant for the purpose of sale and, therefore, no offence under Sections 18(c) and 27(b)(ii) is made out.

It is also submitted by learned Senior Counsel that there is no description of any drug having found at the Centre and it is not the case of the prosecution that the petitioner has kept the drug for the distribution so as to disclose the same to the Inspector. It is next argued that during investigation, no connection between the petitioner and Dr. Ravi, whose name is in FIR as a person conducting the illegal medical termination of pregnancy, is made out.

Learned Senior counsel has relied upon 2014 (37) RCR (Criminal) 889 **Dr. Vandana Malik Vs. State of Haryana**, to submit that the allegations that some instruments for termination of pregnancy were found in the Labour Room of the hospital during a raid, does not prove that the petitioner ever conducted the termination of the pregnancy. The operative part of the judgment reads as under :-

“6. A perusal of the aforesaid penal provisions of Section 5 of the Act makes it evident that termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable

under Section 5(2) of the Act. A person who terminates any pregnancy in a place other than that mentioned in Section 4 of the Act, shall be punished in view of Section 5(3) of the Act. The legislative intent and object behind this act is to restrain termination of pregnancy by a person other than a registered medical practitioner or at a place other than the place provided for in Section 4 of the Act.

7. In the case at hand, the petitioner has been sought to be indicted in the crime on the allegations that some instruments used for termination of pregnancy, were found in the labour room in Malik Hospital, Chand Garden, Samalkha, Panipat during a raid, conducted by a team of doctors. However, during investigation of the case, no evidence has been collected that Dr. Vandana Malik petitioner ever conducted termination of pregnancy. No person can be held guilty for committing a crime on the basis of assumptions and presumptions. This apart, there is nothing on record suggestive of the fact that these instruments are not used for conducting delivery or any other medical procedure, much less used only for termination of pregnancy."

Learned Senior Counsel has also relied upon 2013(16) RCR (Criminal) 104 **Surendra Vs. State of Haryana**, where this Court has quashed an FIR, registered under Section 18 of the Drugs and Cosmetics Act, holding that only a complaint before the competent authority is maintainable.

Similar is the view taken by this Court in 2003 (4) RCR (Criminal) 251 **Satish Chand Vs. State of Haryana**, that under the Drugs and Cosmetics Act only a complaint by the Drug Inspector lies with the Magistrate. Learned Senior Counsel has further submitted that in the absence of any complaint being filed by the Drugs Inspector, Dr. Naval Kishore, being the Civil Surgeon is not competent to lodge the complaint, and, therefore, the FIR is liable to be quashed.

The counsel for the petitioner has also relied upon the judgment of this Court 1997(4) RCR (Criminal) 846 Rajeev Kumar Vs. State of Punjab, wherein it is held by this Court under the Drugs and Cosmetic Act can be filed by the Drugs Inspector and the FIR is not maintainable and the FIR was quashed holding that even there is contravention by the accused under the provisions of Drugs and Cosmetic Act, 1940. a complaint lie by the Drugs Inspector to the competent Court of law and neither FIR nor prosecution by the police is maintainable.

Learned Senior Counsel has submitted that the FIR has been filed by Dr. Naval Kishore on account of the professional jealousy. Lastly, he has submitted that no offence under Sections 120-B, 312 and 511 IPC is made out and, therefore, the FIR be quashed.

The learned State counsel has argued that the case was registered on a secret information received that the petitioners are indulged in illegal activity of termination of pregnancy without their

being any registered hospital and even the petitioner No.2-Dr. Abha Bansal is not registered for performing the MTP. However, no specific reply has been filed.

Learned State counsel, however, on the basis of the report submitted under Section 173 Cr.P.C. has submitted that during investigation, it was found that Dr. Abha Bansal was not having a valid registration certificate under the MTP in her name and was indulged in conducting termination of pregnancy more than 12 weeks which is gross violation of MTP Act, 1971. It is also stated that during investigation some MTP kits were recovered and the register was not properly maintained. It is also stated that as per the call details, Pawan and Dr. Anil Bansal were having conversation with each other and Pawan was called by Dr. Anil Bansal. The details of the instruments recovered from the spot are also mentioned in the report submitted under Section 173 Cr.P.C. It is also stated that Dr. Ravi was also joined in the investigation and has named the petitioners in this regard.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons :-

- (a) Petitioner No.2 Dr. Abha Bansal is holding the degree of MBBS from Panjab University as per the certificate dated 20.1.1983. She is registered with Punjab Medical Council as per the certificate dated 23.6.1983 as well as Haryana Medical Council as per certificate dated 25.9.207. The Civil Surgeon, Gurugram vide certificate dated 19.10.1992 has granted approval of doctor and

place (Nursing Home) for conducting MTP to Dr. Abha Bansal at City Hospital, M-36, DLF Colony, Mahrauli Road, Gurugram. Later on, the petitioner was granted approval by the Civil Surgeon under the MTP Act, 1971 for 12 weeks at Greenwood Health Centre, Gurugram by name to petitioner No.2-Dr. Abha Bansal. All these documents, which are issued under the signatures of the Civil Surgeon, Gurugram are undisputed documents which reflect that not only the place where the raiding party visited Dr. Abha Bansal, i.e. Greenwood Health Centre was an approved place for the MTP and even Dr. Abha Bansal was approved as a doctor for conducting MTP by the Civil Surgeon, Gurugram. Therefore, on the face of it, the FIR has been registered on the basis of the wrong investigation that the petitioner is neither competent to conduct MTP nor her hospital was approved by the competent authority.

- (b) Rather, this suggests that the prosecution of the petitioners is *mala fide* at the instance of Dr. Naval Kishore, who earlier filed criminal complaint against the petitioners, which was quashed by this Court.
- (c) Another fact showing the *mala fide* is that in the petition, i.e. CRM-M-6476-2017 vide which the criminal complaint was quashed by this Court, Dr. Naval Kishore has filed a written statement dated 26.11.2018 as Deputy Civil Surgeon, Gurugram and within three days he registered the present FIR with similar allegations.

- (d) A bare perusal of the FIR and report under Section 173 Cr.P.C. further reveals that there is no allegation that petitioner No.2, in fact, carried any MTP. Rather, the allegations are that the raiding party reached the Nursing Home, the patient was made to lie on a checking table and, therefore, the allegations in the FIR are that petitioner No.2-Abha Bansal made an attempt to do MTP, which is not an offence under the Act.
- (e) Even a perusal of report submitted under Section 173 Cr.P.C. would show that some used instruments for the purpose of MTP were found at the spot. Once it is the case of the prosecution that no MTP was performed on the decoy customer, namely, Puja would itself reveals that the used instruments were never actually used for performing any MTP on the decoy customer.
- (f) Even no offence under the Drugs and Cosmetics Act is made out and, there is nothing on record to suggest that the petitioner has either put anything for the sale and distribution of drugs for which a license under the Drug and Cosmetic Act is required. A bare perusal of the FIR would show that no ingredient of Section 18(a) or 18(c) of the Drug and Cosmetic Act is made out.
- (g) Even otherwise, under the Drugs and Cosmetics Act a complaint is maintainable on behalf of the Drugs Inspector and in the instance case, no such complaint was filed with the Magistrate under the Drugs and

Cosmetics Act and, therefore, the registration of the FIR is not maintainable.

- (h) From the bare perusal of the FIR, no offence under the Sections 312 and 511 read with Section 120-B IPC is made out as there is nothing on record to suggest that petitioner No.2-Abha Bansal actually performed any MTP.
- (i) In view of the Vandana's, Surender, Satish Chander and Rajeev Kumar cases (*supra*), the registration of the FIR under the Drugs and Cosmetics Act is not maintainable.

In view of the above, this petition is allowed and the FIR No. No.551 dated 29.11.2018, registered at Police Station Sector 40, Gurgaon, District Gurgaon under Sections 3, 4 and 5 of the Medical Termination of Pregnancy Act, 1971, Sections 18(ac), 18A, 27(b)(ii) and 28 of Drugs and Cosmetics Act, 1940 and Sections 120-B, 312 and 511 (subsequently added) IPC and all the consequential proceedings therefrom are quashed.

(ARVIND SINGH SANGWAN)
JUDGE

June 01, 2022
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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO