

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-29867-2017

Date of Decision:- .2022

Dr. Sarita Duhan

... Petitioner

Versus

State of Haryana

... Respondent

-.-

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

-.-

Argued by :-

Mr. Tanvir Singh Grewal, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

-.-

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner seeking quashing of order dated 18th May, 2017 (Annexure P-1) passed by the Court of Ld. ACJM, Hisar, whereby the charges were ordered to be framed against the petitioner for commission of offences punishable under Sections 5(3), 5(4) of the Medical Termination of Pregnancy Act, 1971 for contravention of Sections 3 & 4 of the Medical Termination of Pregnancy Act, 1971 (in short 'Act of 1971') and order dated 4th August, 2017, (Annexure P-3) whereby the revision petition filed by the petitioner against the aforesaid order passed by Additional Chief Judicial Magistrate, Hisar was dismissed.

The brief facts of the present petition are that the petitioner who is a BAMS Doctor was running Duhan Hospital and Maternity Centre, Azadnagar, Hisar. The said hospital was not approved under Clause (b) of Section 4 of Act of 1971 for conducting the medical termination of pregnancy. A team comprising of Dr. Tejpal Sharma, Deputy Civil Surgeon, Hisar, Dr. Anita Bansal, Senior Medical Officer, Government Hospital Hisar and Krishan Kumar DCO, Hisar raided the said hospital of the petitioner on 07.03.2016 and during the said raid various equipments used for termination of pregnancy were found kept by the petitioner in the said hospital. The said instruments were seized and converted into sealed parcel and taken into possession by the raiding team. The separate inventory of the seized instruments was prepared along with spot memo and on the basis of aforesaid recovery FIR No.186 dated 8.3.2016 was registered under Sections 4 and 5 of the Act of 1971 against the petitioner. After completion of investigation the police presented challan against the petitioner. The trial Court framed charges against the petitioner vide order Annexure P-1, to which the petitioner did not plead guilty.

The petitioner challenged the said order but the revision petition filed against the same was dismissed by the Revisional Court, vide order Annexure P-3. The petitioner being aggrieved has filed the present petition challenging orders Annexures P-1 and P-3.

The counsel for the petitioner has contended that the petitioner is a BAMS Doctor and was running her clinic namely Duhan Hospital and Maternity Centre at Azadnagar, Hisar. The counsel for the petitioner further contended that as per the prosecution version during a raid conducted by

team of doctors consisting of Dr. Tejpal Sharma, Deputy Civil Surgeon, Hisar, Dr. Anita Bansal, Senior Medical Officer, Government Hospital Hisar and Krishan Kumar DCO, Hisar, various equipments used for termination of pregnancy were found kept in the said hospital. It is further contended that even if the allegations recorded in the FIR against the petitioner are taken to be true on its face value, no offence under Sections 3, 4 and 5 of the Act of 1971 is made out against the petitioner, as the recovery of aforesaid instruments used for termination of pregnancy from the hospital of the petitioner does not attract the penal provisions of Sections 3, 4 and 5 of the Act of 1971. The counsel for the petitioner further contended that in the given circumstances the impugned proceedings emanating from FIR No.186 dated 08.03.2016 under Sections 3, 4 and 5 of Act of 1971 are liable to be quashed. The counsel for the petitioner in support of his contentions referred to ***Dr. Vandana Malik Vs. State of Haryana, 2014 (37) RCR (Crl.) 889 and Dr. Jyanti Sharma Vs. State of Haryana and another, 2019(3) Law Herald, 2386*** wherein the coordinate Bench of this Court quashed the impugned FIRs registered on the basis of raids which resulted in recovery of instruments used for termination of pregnancy from the concerned hospitals.

On the contrary, the Assistant Advocate General appearing on behalf of the State has submitted that during a raid conducted by team of doctors headed by Dr. Tejpal Sharma, Deputy Civil Surgeon, Hisar various equipments used for termination of pregnancy were found from the premises of the hospital being run by the petitioner who is a BAMS doctor. The State counsel further submitted that the said hospital was not a place approved for the purpose of the Act of 1971 by the Government for conducting the

medical termination of pregnancy. The State counsel further submitted that the charge has already been framed by the trial Court against the petitioner vide order Annexure P-1, which has been upheld even by the Court of Additional Sessions Judge, vide order Annexure P-3. The State counsel further argued that the allegations set up against the petitioner are required to be tested during trial for adjudication of culpability of the petitioner.

I have considered the submissions made by the counsel for the parties and perused the record.

The provisions of Section 3, 4 and 5 of the Act of 1971 read as follows:-

Section 3 in The Medical Termination of Pregnancy Act, 1971

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 practitioners 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 as 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 to 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 ⁴ [mentally ill person], 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.

Section 4:

[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 or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee. Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.]

Section 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 the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

⁶ (2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

From the record, it appears that FIR in the present case was registered under Sections 4 and 5 of the Act of 1971 on the basis of complaint dated 7.3.2016 lodged by Dr. Tejpal Sharma, Deputy Civil Surgeon, Hisar, as per which a team of Health Department comprised of Dr. Tejpal Sharma, Deputy Civil Surgeon, Hisar, Dr. Anita Bansal, Senior Medical Officer, and Krishan Kumar DCO, Hisar raided the hospital of the petitioner and during the said raid equipments used for termination of pregnancy were found kept by the petitioner in her hospital.

Section 3 of the Act of 1971 deals with “When pregnancies may be terminated by registered medical practitioners”. Section 4 of the Act of 1971 provides for “Place where pregnancy may be terminated. Sub-Sections (2), (3) and (4) of Section 5 of the Act of 1971 provide for punishment in certain situations reads as given hereby below:-

5. Sections 3 and 4 when not to apply.-

(1) xxxxx

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term

which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

A perusal of the aforesaid penal provisions of Section 5 of the Act of 1971 makes it clear that termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under Section 5(2) of the Act of 1971. A person who terminates any pregnancy in a place other than that mentioned in Section 4 of the Act of 1971 shall be punished as per the provisions of Section 5(3) of the Act of 1971.

In the instant case the petitioner has been charge-sheeted on the allegations that some instruments used for termination of pregnancy were found in her hospital during a raid conducted by team of doctors. No evidence is available on record that the petitioner ever conducted termination of pregnancy or used the recovered instruments for the purpose of termination of pregnancy. In a criminal case the accused cannot be held guilty for commission of crime on the basis of assumptions and presumptions. Admittedly the petitioner who is a BAMS doctor was running Duhan Hospital and Maternity Centre and as such, may be doing deliveries of babies. Nothing is available in the record to suggest that the instruments recovered from the hospital of the petitioner, by the raiding team, are not used for the purpose of conducting such deliveries and are meant only for termination of pregnancy. Further, it is not the case of the prosecution that the petitioner was not a Medical Practitioner as defined in Act of 1971.

As has been argued by the counsel for the petitioner there is no provision in the Act of 1971 under which the petitioner can be penalized for keeping instruments used for termination of pregnancy and in support of his arguments, the counsel for the petitioner has relied upon the judicial pronouncement in ***Dr. Vandana Malik's case (supra)*** which has been further relied upon in ***Dr. Jyanti Sharma's case (supra)*** by this Court. The State counsel failed to cite any judgment running contrary to ***Dr. Vandana Malik's case (supra)***.

In the light of above this Court is of the view that even if the allegations made against the petitioner are accepted to be true on face value, the same do not constitute any offence with which the petitioner has been charged. Thus in the light of the law laid down by the Hon'ble Supreme Court of India in ***State of Haryana and another Vs. Chaudhary Bhajan Lal and others, 1991 (1) RCR (Crl.) 382***, the impugned orders Annexures P-1 and P-3 are liable to be set aside.

For the foregoing reasons, the petition is allowed and the impugned orders Annexures P-1 and P-3 passed by the Court of Additional Chief Judicial Magistrate, Hisar and Additional Sessions Judge, Hisar, respectively are hereby set aside and all the proceedings emanating therefrom are ordered to be quashed and the petitioner stands discharged.

(KARAMJIT SINGH)
JUDGE

28.7.2022

Gaurav Sorot/Puneet Chawla

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No