

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

CRM-M-6476-2017

Reserved on : May 24, 2022

Date of Decision : June 01, 2022

Anil Bansal

....Petitioner

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(s).

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the impugned FIR No.326 dated 12.9.2016 under Sections 23, 3, 4,5 and 6 of the PNDA Act, 1994, registered at Police Station Sector 40, Gurgaon, District Gurgaon and all the consequential proceedings arising therefrom.

Brief facts of the case are that the impugned FIR is registered at the instance of Dr. Saryu Sharma, on the basis of a secret information, a raid was conducted against agent/tout namely Usha, who is indulged in illegal sex determination and one Sheetal was given Rs.30,000/- and a shadow witnesses Kavita was asked to take the patient as a decoy customer for getting the sex

determination done through ultra sound and in this regard impugned FIR was registered.

It is stated in the FIR that a raiding party was prepared and reached at the Bus Stand, Gurgaon where Sheetal called agent Usha who asked her to reach Sohana Chowk and, thereafter, she took them in her own car and asked them to pay Rs.30,000/- along with the identity card. Thereafter, she took the decoy patient with Rs.30,000/- and the identity card in M/s GHC Hospital for sex determination test. Later on, her decoy customer came out after 20 minutes and informed that ultra sound was done by a male doctor, who informed that it is a female baby fetus and no documents/forms were prepared or signed. Thereafter the raiding team entered the hospital and informed that doctor and agents were sitting in the room and recovered an amount of Rs.25,000/- from the doctor and Rs.5,000/- from Usha. Thereafter, the premises was sealed and spot memo and seizure memo were prepared and the ultra sound machine along with the recovered amount, PNDT Register and others were taken into possession. With the aforesaid allegations the information was sent to the police for registration of the FIR.

Learned Senior Counsel has argued that Section 28 of the Act provides 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 any officer authorized 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 organization.

- (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 sub-section (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.”

Learned Senior counsel has further argued that as per the provisions of Section 28 of the Act, no Court can take cognizance of an offence under this Act except on a complaint given by the appropriate authority or any officer authorised on behalf of the State or Centre government as the case may be. It is next argued that on a bare

perusal of the FIR, it is apparent that the petitioner was not found conducting any sex determination test on the spot, when the raiding team visited the premises and the allegations are only that later on, on the declaration of Usha, the decoy customer wherein she stated that the petitioner has conducted the sex determination test, the present FIR has been registered. It is also argued that the decoy patient was not subjected to any ultra sound test as there is no entry in the PNDT register. Neither the consent of the petitioner on the consent form was taken nor the identity of the alleged decoy patient was mentioned in the PNDT register, maintained by the petitioner in due course which itself reflects that only on the statement of decoy customer, the FIR has been registered whereas the record of the petitioner show that no such procedure for conducting sex determination on the spot was done and even as per the own case of the prosecution, the petitioner was not found conducting any such test.

Learned Senior counsel has submitted that a bare perusal of Sections 3, 4, 5 and 6 of the PNDT Act, no case is made out against the petitioner. It is also submitted that the petitioner is running his clinic which was duly registered. It is further submitted that the petitioner is holding a degree of MBBS from Guru Nanak Dev University and MD in Medicine. It is submitted that Haryana Medical Council has given certificate of registration to the petitioner at City Hospital, Gurugram and further as per the certificate issued by the office of Civil Surgeon-cum-District Appropriate Authority, Gurugram dated 28.11.2011, the premises

City Hospital, Gurugram was approved as clinic for ultra sound genetic counseling and imaging Centre and it is specifically provided in this certificate that pre-natal diagnostic procedure which are non-invasive can be conducted. Similarly, pre-natal diagnostic test can also be conducted. Thereafter, vide letter dated 14.6.2012, the District Appropriate Authority-cum-Civil Surgeon granted permission for registration of the ultra sound machine.

Learned Senior Counsel has next argued that as per the notification dated 5.11.2013, the State of Haryana has appointed three members of appropriate authority under Section 17 of the Act comprising of Civil Surgeon as Chairman, District Programme Officer, Women and Child Development and District Attorney as members. Section 17(4)(c) gives power to investigate the completion of breach of provision of PC and PNDT Act, 1994 or violation of the rules made thereunder.

It is next argued that except the Appropriate Authority no other person is authorized to conduct any investigation of breach of provision of Section of PC and PNDT Act. From the perusal of the FIR, it is apparent that the same was not adhered to. It is next argued that under Section 28 of the Act, it is provided that cognizance of offence under the Act can only be taken by the Magistrate on a complaint by the Appropriate Authority or by person who has given a notice of not less than 15 days to the Appropriate Authority to file such complaint.

Learned Senior Counsel, thus, submits that the trial Court was not competent to take cognizance of the report under Section 173 Cr.P.C. in view of the bar under Section 28 of the PC & PNDT Act. Learned Senior Counsel has relied upon the judgment of this Court passed in CRM-M-3063-2012 decided on 16.5.2013 **Dr. Shiv Kumar Vs. State of Haryana**, wherein on similar facts, FIR has been quashed.

A similar view has been taken in judgment of this Court passed in CRM-M-10527-2017 titled '**Krishanu Aaryan Bhola Vs. State of Haryana**', decided on 10.10.2018. The operative part of the judgment reads as under :-

"5. The legal position regarding registration of FIR as per provisions of PNDT Act has been settled in case of Hardeep Singh (supra), wherein Hon'ble Division Bench of this Court has observed in concluding para of the judgment as follows:-

"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 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only

(sic. on) 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.”

6. It is apparent from the above observations that firstly FIR can be registered on the complaint of Appropriate Authority and secondly, cognizance can only be taken on the complaint by the Appropriate Authority. Admittedly, complaint has been filed separately by the Appropriate Authority of which Court can take cognizance and proceed with it in accordance with law.

7. In view of above facts, this petition is allowed and the impugned FIR No. 560 dated 25.06.2016, registered at Police Station Hisar City for offences punishable under Sections 4 (5) and 23 of 'PNDT Act' along with all consequential proceedings arising therefrom, qua petitioners, is quashed.”

Replies by way of affidavit of Assistant Commissioner of Police Sadar, Gurugram as well as the District Appropriate Authority are on record.

It is stated in the affidavit filed by the Investigating Agency that on receiving the information, the FIR was registered and on completing the investigation, the report was submitted to the Appropriate Authority under the PC and PNDT Act, who will file the complaint in the concerned Court as soon as

possible. The operative part of the preliminary objections reads as under :-

“During the course of investigation, the petitioner was joined in the investigation on 15.9.2016 when he was formally arrested. After completing the investigation, the report was submitted to the appropriate authority under the PNDDT Act, 1994, who will file the complaint in the concerned Court as soon as possible.”

In the reply filed by the Deputy Civil Surgeon-cum-PNDDT Nodal Officer, Gurugram after giving the details of the allegations in the FIR it is stated that when the raiding party entered the hospital, petitioner-Anil Bansal and the agent/tout Usha were sitting in a room and it was informed by the decoy customer Sheetal that a male doctor has performed the ultrasound disclosing the sex of fetus and then the recovery of the amount was effected. It is also stated that vide spot memo and seizure memo, the ultrasound machine was taken into possession. It is also stated that after the arrest of Usha, she has made a disclosure statement regarding her involvement in the crime in connivance with petitioner-Anil Bansal. It is stated in Para 3 of the affidavit it is correct that the Court can take cognizance under Section 28 of the Act on a complaint filed by the Appropriate Authority. However, under Section 27 of the Act, all the offences under the Act are cognizable and non-bailable. Therefore, the police has power to lodge the FIR.

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

- (1) The petitioner holds the qualification of MBBS and M.D.(Medicine) and is duly registered with the Haryana Medical Council as per the certificate of registration dated 25.9.2007.
- (2) The petitioner is even having his City Hospital, Greenwood City, Sector 45, Gurugram registered with the District Appropriate Authority as per the certificate dated 28.11.2011. The petitioner has also been granted the permission to install an ultrasound machine by the Civil Surgeon-cum-District Appropriate Authority, Gurugram. [Annexure P2 (colly.)].
- (3) Therefore, in all respect, the petitioner is a person competent under the PNDT Act for the purpose of conducting the ultrasound test.
- (4) The allegation in the FIR that the petitioner has violated the provisions of Section 23(3), 4, 5 and 6 and PNDT, 1994 are not at all made out from the bare perusal of the FIR.
- (5) The FIR has been registered in contravention to provisions of Section 28 of the PNDT Act providing a procedure to be adopted regarding violation of the Act. As per Section 28 of the Act, the cognizance of an offence under the PNDT Act can only be taken on a complaint given by the appropriate authority or any other person authorized under the Act.

Therefore, the registration of the FIR, with regard to the violation of PNDT Act is not maintainable

in view of the judgment of this Court passed in Krishanu Aaryan Bhola's case (*supra*)

- (6) Even otherwise, as per the allegations in the FIR, when the alleged raid was conducted, the petitioner was not found at the spot conducting any sex determination test and rather, the petitioner has been nominated, later on, on the alleged disclosure statement of the decoy patient.
- (7) During the investigation nothing is found that the petitioner has made any ultrasound scan of the decoy patient as neither there is any entry in the PNDT register nor any consent form was taken or the identity card of the alleged decoy patient is mentioned in the PNDT register maintained by the petitioner. Therefore, the involvement of the petitioner in the present case is nothing but an act of *mala fide* as on an earlier occasion, the petitioner was involved in similar situation and complaint filed against the petitioner was quashed and another FIR No.551 dated 29.11.2018 is also quashed by passing of the order of even date noticing the fact that the petitioner is being harassed by Dr. Saryu Sharma, repeatedly.
- (8) A perusal of the FIR further could not make out an offence under Section 23 of the PNDT Act and the petitioner, being a registered practitioner having a registered clinic, in view of the certificates referred Annexure P2 (colly.), on the face of it, there is no violation of Sections 3, 4 and 5 of the PNDT Act.
- (9) Even in the investigation on the challan report, nothing has come on record that as to how the

petitioner has violated the aforesaid provisions. A perusal of the FIR further show that the appropriate authority appointed by the Government notification is authorized to conduct the investigation into the breach of provisions of PC and PNDT Act, 1994 as well as the rules made thereunder and the police is not competent to register an FIR and conduct the investigation.

- (10) In the written statement filed by the Assistant Commissioner of Police, Sadar Gurugram, nothing is stated as to how and under what provisions the police has conducted the investigation in view of Sections 27 and 28 of the PNDT Act.

Accordingly, finding that the FIR under the PNDT Act is not maintainable and also that the earlier complaint and the FIR registered at the instance of same complainant Dr. Saryu Sharma stand quashed by this Court holding the prosecution of the of the petitioner to be *mala fide*, this petition is allowed and the FIR No.326 dated 12.9.2016 under Sections 23, 3, 4,5 and 6 of the PNDT Act, 1994, registered at Police Station Sector 40, Gurgaon, District Gurgaon and all the consequential proceedings arising therefrom, are, hereby, quashed.

(ARVIND SINGH SANGWAN)
JUDGE

June 01, 2022
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO