

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-55856-2018

Date of Decision:- 19.09.2022

Usha.

.....**Petitioner.**

Versus

State of Haryana & Anr.

.....**Respondents.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Harsh Mehla, Advocate for the Petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.

The petitioner-Usha in this petition filed under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') has sought quashing of Complaint Case No. COMA/0000135/2015 dated 12.08.2015 (Annexure P-1), titled “State of Haryana through Dr. Ramesh Kumar vs. Dr.Sona Goel and another” instituted for offence punishable under Section 28 of Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'PNDT Act'), pending in Court of Judicial Magistrate Ist Class, Yamunanagar, in which she has been summoned vide order dated 12.08.2015 (Annexure P-2) to face trial for offences punishable under Sections 23/25 of PNDT Act.

Brief Facts of complaint:-

2. On receipt of a complaint that sex determination tests were

being conducted at S.P. Hospital, opposite Saraswati Vidya Mandir School, Chhachhrauli Road, Jagadhari, a decoy patient was sent to verify the fact and it was found that clinic was ready to do sex selection/determination test. On 31.07.2015, Deputy Commissioner, Yamunanagar directed Tehsildar, Deputy Civil Surgeon, Yamunanagar, DCWO and one police officer to conduct a raid on the hospital. The team took assistance of a decoy patient, namely, Asha by giving her 34 currency notes of the denomination of Rs.500/- each (total Rs.17,000/- having short signatures of Dr. Vijay Dahiya and DSP Madan Lal). She was directed to go to Dr. Sona Goel in the hospital and on paying Rs.17,000/- asked her (Dr. Sona Goel) to determine the sex of the foetus in her body. Proceedings qua Dr. Sona Goel stands quashed vide order dated 14.09.2018.

3. The decoy patient contacted accused no. 2-Usha (the present petitioner), agent of accused no. 1. The petitioner took her to the clinic of Dr. Sona Goel within the premises of S.P. Hospital, Jagadhari, where Dr. Sona Goel received Rs.17,000/- and returned Rs.2000/- as concession. She filled a form and started doing tests for determination of sex of the foetus in the body of the decoy patient on her sonography machine. The raiding party entered and raided the clinic, where the sex determination test was going on. The team also recovered a film of USG of the decoy patient and Rs.15,000/- from Dr. Sona Goel. Remaining Rs.2000/- were also collected from the decoy patient. On verification it was found that these were the same currency notes, which were having signatures of Dr. Vijay Dahiya and DSP Madan Lal. The raiding party took into possession Form-F of the decoy patient, her incomplete ultrasound, OPD slip with carbon copy, ultrasound print recovered from USG machine of petitioner, ultrasound record register,

PNDT inspection form. Spot memo was prepared, which Dr. Sona Goel refused to sign and thereafter the complaint was filed in Court.

4. The Learned Magistrate on perusal of the complaint found a prima facie case to proceed against petitioner and her co-accused and both were ordered to be summoned to face trial for offence punishable under Section 23 of the PNDT Act.

5. The Learned counsel for the petitioner submits that the complaint has not been filed by the competent authority. He has referred to the office order dated 07.08.2015, which shows that District Appropriate Authority-cum-Civil Surgeon, Yamunanagar, who was authorized to institute and conduct all proceedings in connection with the complaint against the petitioner and her co-accused. Civil Surgeon, Yamunanagar, had retired on 31.07.2015 and there was no order authorizing Dr. Ramesh Kumar, Senior Medical Officer, Civil Hospital, Yamunanagar to take charge of Civil Surgeon and act as District Appropriate Authority under the PNDT Act. The raid was conducted on the day the Civil Surgeon Dr. V.P. Mann had retired. The complaint was filed by Dr. Ramesh Kumar in his capacity as Civil Surgeon on 12.08.2015. At that time he was neither a Civil Surgeon nor District Appropriate Authority under the PNDT Act. This fact is clear from perusal of the order passed by Principal Secretary to Government of Haryana, Health Department dated 09.09.2015 and information taken under the Right to Information Act (Annexure P-5). Conducting of raid and filing of complaint by Dr. Ramesh Kumar is the result of enmity between Dr. Ramesh Kumar on one hand and Dr. Anoop Goel, husband of Dr. Sona Goel, who was also posted in Civil Hospital, Yamunanagar, on other hand. Just to harass and humiliate Dr. Anoop Goel, Dr. Ramesh Kumar on the day

of retirement of the Civil Surgeon manipulated the raid and filing of complaint against the accused. The facts as stated in complaint were also not correct as the decoy customer Asha approached Dr. Sona Goel as a normal patient. It was her 4th gravida and as per medical science it was a high risk pregnancy. She was having 2½ – 3 months pregnancy and expected date of delivery was 17.02.2016. After preparing the prescription slip, she was advised ultrasound to check foetal well being and mortality as she wanted the complete package of her check up and delivery in the hospital of Dr. Sona Goel. Second copy of prescription was also prepared to send the same to the Civil Surgeon. Two copies of Form-F of the decoy customer were prepared, as such, all the required formalities were completed in duplicate so that one copy may be sent for the record of Civil Surgeon as per requirements of PNDT Act. Even at the stage of 10 to 12 weeks of pregnancy, the sex of a child in the womb cannot be determined. He contends that so far as the petitioner is concerned, she has been falsely implicated in the case and even otherwise proceedings qua Dr. Sona Goel stands quashed vide order dated 14.09.2018 and the said order remains unchallenged before the Hon'ble Supreme Court. Therefore, the petitioner is on a better footing.

6. The Learned State counsel has argued that State of Haryana vide notification as per provisions of Section 17 (2) of PNDT Act has constituted District Appropriate Authority, which consists of following persons:-

- (i) *Civil Surgeon-cum-Chairman, District Appropriate Authority, Yamunanagar.*
- (ii) *District Attorney, District Appropriate Authority Member, Yamunanagar.*
- (iii) *POICDS, District Appropriate Authority, Yamunanagar.*

7. On a complaint that sex selection/determination is going on at S.P. Hospital of petitioner, a decoy patient was sent to verify the fact. It was found that clinic of Dr. Sona Goel was ready to do sex selection/determination tests. On 31.07.2015, Deputy Commissioner, Yamunanagar directed the following officers to conduct a raid on the said hospital:-

- (i) *Sh. Darshan Kumar, Tehsildar, Jagadhari.*
- (ii) *Dr. Vijay Dahiya, Deputy Civil Surgeon, PNMT, Yamunanagar.*
- (iii) *Smt. Manisha Khanna, DCWO, Yamunanagar.*
- (iv) *One police officer as per direction of S.P. Yamunanagar.*

8. On intimation from Deputy Commissioner, District Appropriate Authority authorized the following officers to conduct the raid:-

- (i) *Sh. Darshan Kumar, Tehsildar, Jagadhari.*
- (ii) *Dr. Vijay Dahiya, Deputy Civil Surgeon, PNMT, Yamunanagar.*
- (iii) *Smt. Manisha Khanna, DCWO, Yamunanagar.*
- (iv) *Sh. Madan Lal, DSP, Yamunanagar.*

9. As per allegation in the complaint, Dr. Sona Goel received a sum of Rs.17,000/- from the decoy patient and returned `2000/- as concession. She filled a form and started the ultrasound for determination of sex of fetus in the body of decoy patient through her sonography machine. When raiding party entered her OPD clinic, sex determination of foetus was going on. The team raised the film of USG of decoy patient and recovered Rs.15,000/- from drawer of the table. The team also found Form-F of Asha incomplete, ultrasound report with carbon copy and OPD slip with carbon copy. As per office order dated 07.08.2015 (Annexure P-3) authorization was given to Chairman, District Appropriate Authority to file the complaint,

which was filed on 18.12.2015. It has, however, been admitted in para 5 of the reply, that by 06.12.2019 there was no order appointing Dr. Ramesh Kumar as Civil Surgeon. Para 5 of the reply to this effect is reproduced as follows:-

“5. That the contents of para no. 5 of the petition are wrong, incorrect and hence denied. Due procedure was adopted while conducting the raid. The present complaint has been filed by the District Appropriate Authority as explained in preliminary objections. It is correct that Dr. Ved Pal Mann was Civil Surgeon on 31.07.2015 and he was to retire on 31.07.2015 after duty hours. Dr. Ved Pal Mann handed over charge of post of Civil Surgeon to the next senior most officer, who was Dr. Ramesh Kumar as per general norms and practice though there was no government orders regarding that. Accordingly, Dr. Ramesh Kumar took over charge from Dr. Ved Pal Mann as Civil Surgeon as the post of Civil Surgeon cannot be kept in abeyance. The order dated 07.08.2015 (Annexure P-3) is self speaking and question of any fabrication of the order does not arise at all. It is absolutely wrong that on 07.08.2015, Dr. Ramesh Kumar was not Civil Surgeon. Dr. Ramesh Kumar worked as officiating Civil Surgeon upto 10.09.2015 and thereafter, Dr. Vijay Garg the present Civil Surgeon took over charge from Dr. Ramesh Kumar on dt. 10.09.2015.”

10. Learned State counsel has argued that order dated 03.09.2015 issued by Haryana Government was having retrospective effect as post of Civil Surgeon cannot be kept in abeyance and the next medical officer took over the charge of Civil Surgeon in the event of retirement of a Civil Surgeon and as such, Dr. Ramesh Kumar was authorized to conduct the raid and file the complaint.

11. A vital question, which arises for consideration in this petition,

is as to whether complaint has been filed by a competent person. Section 28 reads as follows:-

“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 authorised in this behalf by the Central Government or the State

Government, as the case may be, or the Appropriate Authority;

or

(b) xx xx xx xx”

12. It is admitted that Dr. V.P. Mann, Civil Surgeon, Yamunanagar had retired on 31.07.2015. It is also not disputed that Dr. Ramesh Kumar took the charge of Civil Surgeon on 10.09.2015. The present complaint was filed by him in his capacity as Chairman, District Appropriate Authority cum-Civil Surgeon, Yamunanagar on 12.08.2015 i.e. much prior to the day he took charge as Civil Surgeon. As per notification issued by the Haryana Government, as per power conferred under Section 17 (2) PNDDT Act, the District Appropriate Authority comprise of Civil Surgeon-cum-Chairman, District Attorney and POICDS. On 31.07.2015, Dr. V.P. Mann was Civil Surgeon, as such, there was no question of Dr. Ramesh Kumar taking the charge of Civil Surgeon. He was authorized to look after the work of Civil Surgeon, Yamunanagar vide order dated 03.09.2015, copy of which has been placed on file as Annexure P-4, which reads as follow:-

“ After retirement of Dr. Ved Pal Mann, Civil Surgeon, Yamunanagar on 31.07.2015, the work of Civil Surgeon, Yamunanagar will be looked after by Dr. Ramesh Kumar, Senior Medical Officer, Civil Hospital, Yamunanagar including the work of PNDDT Act with immediate effect.

*Dated, Chandigarh
the 3rd September, 2015*

*R.R. Jowel
Principal Secretary to Government
Haryana, Health Department.”*

13. It is not disputed that the office of Civil Surgeon has provided following information (Annexure P-5) under the Right to Information Act:-

*“1. Point No. 1 – There was no order of Government of Dr. Ramesh to take over the charge of Civil Surgeon on 31st July, 2015. But Dr. V.P. Mann who retired as Civil Surgeon on dated 31st July, 2015 handed over the charge to Dr. Ramesh who was the senior most in the district.
2. Point no. 2 – Yes, there was an order of Principal Secretary to Government, Haryana allowing Dr. Ramesh to join as Civil Surgeon including the work of PNDT Act which was issued on dated 09.09.2015 and received in this office on dated 15.09.2015.”*

14. The above documents show that Dr. Ramesh Kumar was neither Civil Surgeon nor Chairman, Appropriate Authority and, as such, was not competent to participate in the meeting of District Appropriate Authority or to take any decision on behalf of the District Appropriate Authority, Yamunanagar. Vide office order dated 07.08.2015 (Annexure P-3), Chairman of the District Appropriate Authority-cum-Civil Surgeon, Yamunanagar was authorized to institute and conduct all the relevant acts in pursuance of the complaint against the accused. The office order issued by District Appropriate Authority, Yamunanagar, reads as follows:-

“ As per authorization given to the team by the Chairman, D.A.A./Civil Surgeon, Yamunanagar, a raid was conducted on 31.07.2015 in the premises of S.P. Hospital, Jagadhri. Dr.Sona Goel was caught in the premises of S.P. Hospital, Jagadhri to conduct sex determination which is clear violation of provision of PC and PNDT Act, 1994. We (Chairman and members of D.A.A.) hereby authorizes Chairman of District Appropriate Authority-cum-Civil Surgeon, Yamunanagar to institute and conduct all relevant act in persuasion of the said complaint. S.P. Hospital, Jagadhri and Dr. Sona Goel, who was caught while conducting the sex determination test on the patient.”

15. A perusal of the above order shows that firstly, Dr. Ramesh Kumar was not competent to pass such an order as he was not Civil Surgeon or Chairman, District Appropriate Authority on 07.08.2015.

Secondly, Chairman of District Appropriate Authority-cum-Civil Surgeon, Yamunanagar was authorized to institute a complaint against the accused and Dr. Ramesh Kumar, who had not been appointed as Civil Surgeon, was not competent to file complaint on 12.08.2015.

16. As per provisions of Section 28 of PNDT Act, the learned Additional Chief Judicial Magistrate was not competent to take cognizance of the offence as the complaint had not been filed before the court by a competent person. Dr. Ramesh Kumar was not even authorized to look after the work of Civil Surgeon, Yamunanagar till State Government had passed order dated 03.09.2015 (Annexure P-4) authorizing him to look after the work of Civil Surgeon, Yamunanagar including the work under the PNDT Act. This order was issued on 09.09.2015. A bare perusal of this order shows that it was not given any retrospective effect.

17. As a sequel of the above discussion, it is apparent and abundantly proved on record that Dr. Ramesh Kumar was not competent to file the complaint dated 12.08.2015 and cognizance of the same taken by Additional Chief Judicial Magistrate is barred under Section 28 of PNDT Act.

18. In view of the above, it is not required to look into the other submissions of the learned counsel for the petitioner. The complaint filed and cognizance of the same taken by the learned Magistrate has resulted in abuse of the process of law and same is liable to be quashed. Moreso when proceedings qua Dr. Sona Goel stands quashed vide order dated 14.09.2018 (Annexure P-8).

19. For the reasons as discussed above, the instant petition is allowed and Complaint Case No. COMA/0000135/2015 dated 12.08.2015

(Annexure P-1), titled “State of Haryana through Dr. Ramesh Kumar vs. Dr. Sona Goel and another” and summoning order dated 12.08.2015 (Annexure P-2) along with all consequential proceedings arising therefrom, qua the petitioner, are quashed.

(JASJIT SINGH BEDI)
JUDGE

September 19 , 2022
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No