

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO.183 OF 2021
WITH APPLN/2726/2022**

Dr. Tukaram s/o Ramkrishana Karde
Age : 45 yrs, Occu. Medical Practitioner,
R/o. Bhagwat Hospital, College Road, Washi,
Tq. Washi, District Osmanabad.

...Rev. Petitioner
(Orig. Accused No.1)

VERSUS

1. The State of Maharashtra
Through APP High Court Aurangabad.
(Copy to be served on APP High Court of
Judicature of Bombay Bench at Aurangabad).

2. Dr. Rajabhau s/o Vishwanath Galande.
Age : 45 yrs, Occu. : Medical Officer,
R/o Rural Hospital, Washi,
Tq. Washi, Dist. Osmanabad.

...Respondents
(Orig. Complainant)

...

Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Shriram V.
Deshmukh i/b Mr. V.M. Maney, Advocate for Petitioner.
Mr. S.B. Narwade, APP for Respondent Nos.1 & 2.

...

CORAM : S.G. MEHARE, J.

RESERVED ON : JULY 05, 2023

PRONOUNCED ON : SEPTEMBER 25, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. The petitioner has impugned the judgments and orders of conviction passed by the learned Judicial Magistrate First Class, Washi, District Osmanabad in R.C.C. No.30 of 2011, decided on 12.01.2016

and confirmed by the learned Additional Sessions Judge-1, Bhoom, by judgment and order in Criminal Appeal No.03 of 2016 dated 30.11.2021.

3. The petitioner has been convicted for the offence punishable under Section 23 of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (For short 'Act 1994') r/w Rule 9(4) of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (For short 'Rules 1996').

4. The facts giving rise to the prosecution case were that the petitioner was the medical practitioner and owner of Hospital and Genetic Clinic, under the name and style 'Bhagwant Hospital' at Washi. The petitioner was BHMS. He obtained a Certificate of Registration to run a Genetic Clinic for pre-natal diagnostic procedures for Ultrasound on 10.05. 2002 from Civil Surgeon, General Hospital, Parbhani for five years. Thereafter, he renewed the registration, and it was renewed for a further five years from 15.05.2007. On 12.05.2005. The Civil Surgeon had granted permission to Dr. D.M. Jagtap to operate the machine at the Hospital of the applicant. In the said permission, a specific condition was laid that Dr. Jagtap would be responsible for maintaining the record of the Sonography Centre, and the applicant shall take note thereof.

5. The prosecution has a case in brief that the Complainant

was the Taluka Appropriate Authority for inspecting the Sonography Centers. On 17.02.2011, the Complainant and members of the District Level squad inspected the Genetic Clinic of the accused. In the inspection, they noticed many irregularities. The registers were not maintained in the prescribed forms. The consent forms after 27.12.2009 were not available. The case record was also not available. Dr. Jagtap stopped visiting the Centre from 06.01.2010 to conduct the sonography. The petitioner had forwarded the 'nil' reports, although the Radiologist was not visiting the Centre. They seized the necessary papers and drew the seizer panchanama in the presence of the accused. He put his signature and obtained the signatures of the members of the squad on panchanama. Lastly, he filed the complaint.

6. Admittedly, Dr. Jagtap was not arraigned as an accused in the complaint. He was added as accused by the Court order dated 18.01.2012 below Ex. 51. However, this Court, by order in Criminal Writ Petition No. 22 of 2014 dated January 5, 2015, discharged him on the basis of the admission of the Complainant that the accused had furnished the undertaking before the Civil Surgeon accepting the responsibility to maintain and preserve the record. The trial Court discharged the accused No. 2 by order dated 22.03. 2012. His prayer for discharge was also refused by the High Court. Hence, the accused faced the trial and was convicted, as mentioned above.

7. Learned senior counsel Mr. Rajendra Deshmukh for the

accused has argued that there are various apparent errors of law on the face of the record. On 19.12.2005, by permission exhibit-137, Dr. Jagtap was permitted to operate the sonography machine. Therefore, he was responsible for the statutory compliances. Since the accused was not the expert, he cannot be held responsible for the statutory compliances. After Dr. Jagtap stopped visiting the Genetic Clinic, as per the directions of the office of the first informant, the accused sent the 'nil' monthly reports. Therefore, both Courts erred in law in not believing it was a statutory compliance. The Court did not appropriately consider the law in the facts and circumstances of the case. The charges were also not properly framed. The Complainant, who had given a surprise visit to the Clinic, had no authority. A notification authorizing him to inspect/visit the Hospital was not produced on record. Proviso to sub-section 3 of the Act 1994 fixes the responsibility of the person to keep the complete record. The procedure for search and seizure prescribed under Rule 12(2) and (3) of Rule 1996), which was mandatory, has been violated. He also referred to Section 28 and argued that PW-1 was not the Appropriate Authority; hence, his inspection and complaint were illegal and defective. He also referred to Rule 18-A (5), 9(i)(ii). He relied on a bunch of case laws to bolster his arguments that the petitioner had been wrongly held responsible for maintaining the record and violating the provisions and rules of the Act 1994 and Rules 1996

framed thereunder and prayed to allow the criminal revision application.

8. Per contra, the learned APP would submit that the Clinic was registered in the name of the accused. Therefore, as per Section 4(3) r/w Rule 9(4)(6) of the Act 1994 and Rules 1996, the petitioner was solely responsible for maintaining and preserving the record. He had given an undertaking to be responsible for maintaining the record. When there was no expert to operate the sonography machine, he should have surrendered his Registration Certificate as provided under Rule 6(6) of the Rules 1996 to the Appropriate Authority. The authenticity of the Notification empowering the Complainant to inspect the Clinic was never challenged. The question nos.14, 15, 26, 40 and 48 of the statement of the accused under Section 313 speaks a large and sufficient to prove his responsibility. Both Courts have correctly passed the judgments and order of the conviction with correct reasons, and those are free from infirmity. There is no *prima facie* error on the face of the record. There are two concurrent judgments against the petitioner. A serious offence has been committed. He relied on the case of the Federation of Obstetrics and Gynecological Societies of India v Union of India, 2019 Mh.L.J. 448 (S.C.). He prayed to dismiss the criminal revision application.

9. The accused has raised the following broad objections;

(A) The Complainant was not the Appropriate Authority; hence,

his complaint was bad in law.

(B) The accused was not responsible for maintaining and preserving the record as required under the Act and Rules.

(C) Sending monthly report 'NIL' is not an offence.

(D) The Appropriate Authority violated the mandatory Rule 12 of the Rules 1996 by not seizing the record in the presence of the independent witness.

10. Before advertizing to the controversy, the Court clarifies that the Act 1994 and the Rules 1996 have been amended from time to time. However, the alleged incident happened before the amendment of 2003; hence, the law and rules before the 2003 amendment have been considered.

As to point A :

11. Section 28 of the Act provides that no Court shall take cognizance of the offence under the Act except the complaint is made by the Appropriate Authority concerned or any officer authorized in this behalf by the Central or the State Government as the case may be. The law mandates that the person authorized by the Government can only put the Act into motion. Section 17 (2) of the Act 1994 states that the State Government shall appoint the Appropriate Authority by Notification in the Official Gazette for the State or part of the State.

12. Admittedly, on the alleged date of the incident, the Complainant was serving as a Medical Officer Class II at Rural

Hospital. However, from February 2005 till 31.05.2011, he had an additional charge of the Medical Superintendent, Class I, of Rural Hospital Vashi. He had a case, the State Government Notification dated February 21, 2008, authorized him to conduct the inspections and take legal actions against the errant Clinics and Sonography Centers. By another Government Notification dated April 9, 2007, he was authorized to inspect the Sonography machines in Vashi Taluka. The February 2, 2008, notification was on the record below Ex.22.

13. The State Government, by Notification dated February,2,2008, appointed many Officers, including the Medical Superintendent (Rural Hospital), as Appropriate Authority.

14. The learned APP submits that the Government notification dated February 2, 2008, was in force on the day of the alleged incident. The Complainant was holding the charge of the Medical Superintendent on the day when the Clinic of the accused was inspected. Hence, the Complainant was competent to inspect the Clinic of the accused and file a Complaint.

15. The Complainant was cross-examined on his Authority, but his case was that he was in charge of the Medical Superintendent on the day of the incident. The accused had obtained the information under the Right to Information Act. He received the information on 16.11.2018. It was obtained after the Judgment of the learned Trial Court. However, it appears that the said information has been made a

part of the record of the learned first Appellate Court. The information elicited under the R.T.I. Act by the accused showed that during the period, particularly on the day of the incident, the Complainant was in charge of the Medical Superintendent of Rural Hospital, Vashi. The said information is against the objection raised by the accused and supports the Complainant. The said document was part of the record of the first appellate Court this way or the other. The question would be whether such a document can be admitted in evidence.

16. The information in response to the application under the R.T.I, Act elicited could be a certified copy. It is supplied on charges and issued under the seal and signature of the Public Information Officer. It had the character of a certified copy. Section 77 of the Indian Evidence Act provides that the certified copy may be produced in proof of the contents of the public documents or parts of the public documents they purport to be copies. Section 79 of the Indian Evidence Act presumes the certified copies are genuine. The said document, being a certified copy, may be proved by its production in the Court. The information collected regarding the Complainant in charge was supplied by way of a certified copy. Hence, it may be presumed a copy prepared from the documents forming the acts of the public officer. The superior officers, by orders or general orders, keep the charge of a particular post with a particular officer. Some provisions and rules prescribe with whom the charge would be in the

absence of the regular officer. In the fact situation, this Court is of the view that response letters from R.T.I. Officials are primary evidence of public documents and should be admitted in evidence without any corroborative oral evidence. The record reveals that the Complainant's oral evidence had gone unchallenged that the Complainant was in charge of the Medical Superintendent of the Rural Hospital, Vashi.

17. A serious objection was raised that the Complainant did not file the Government Gazette dt. 9.4.2007, based on which the complaint was filed. The gazette notification of 12.02.2008 was filed at the time of evidence. By the said Notification, the Additional Collector, S.D.O., Tahsildar, Naib Tahsildar, Commissioner of Municipal Corporations and Councils, and Chief Officer (Nagar Parishad) were appointed as the Appropriate Authority. It was a xerox copy. However, the trial Court had wrongly Exhibited it. According to rule 18(5) (ii) of the Rules 1996, the Appropriate Authority shall ensure that while filing the case, all the notifications or the Government be produced in original in the Court and other material objects attached to the case file shall be in original. The copy of the Notification dated 12.2.2008 was xerox, but the trial Court had exhibited it and admitted in the evidence erroneously. Both Courts have ignored such a legal requirement, which directly affected the complaint.

18. The accused did not raise an objection to the Exhibition of the Notification dated 12.2.2008 when exhibited by the learned

trial Court nor put a single suggestion or question to the Complainant that it was a Xerox copy of the Notification.

19. Rule 18 does not bear sub-rule 5 (ii). The arguments before the first Appellate Court were advanced in the year 2021. Rule 18-A was inserted by G.S.R. 109(E) dated 24.02.2014 (w.e.f. 26.2.2014) and that bears sub-rule 5(ii). The complaint was filed in 2011; at that time, Rule 18-A was not born. Therefore, Rule 18-A would not apply to the case at hand.

20. Considering the vehement objections raised above and on examining the relevant provisions of the Act and Rules, the Court is of the opinion that the Complainant was in charge of the Medical Superintendent of Rural Hospital, Vashi and was the Appropriate Authority as notified in the Government Gazette dated 12.02.2008. There was no defect in the complaint. Hence, point A has been answered Accordingly.

As to Point B :

21. The tone of the arguments of the learned senior counsel for the accused, as regards the prescribed forms to be maintained by the Clinic, was that the Forms which were allegedly seized from the Clinic of the accused were supplied by the Civil Surgeon, which was sent to him by the State Government; therefore, it can not be said that the Forms were not in prescribed Forms.

22. A large number of Sections and Rules under the Act 1994

and Rules 1996 were substituted, inserted or amended by Act 14 of 2003 (w.e.f. 14.2.2003). The title of the Act was substituted in 2003. Before 2003, the title of the Act and Rules were the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 and Rules 1996. Form F was also substituted in 2003. Some columns were added to old prescribed Forms, and the declaration of the pregnant woman and Doctor/person conducting Ultrasonography/Image Scanning were added to the foot of prescribed Form F in 2003. However, the forms were mostly the same as before 2003.

23. The accused got the Registration Certificate for the first time on 10.05.2002, and then the amendments were brought. However, the Forms the accused claimed were prescribed Forms do not match anywhere with the Forms as prescribed nor bear the endorsement of its printing in the Government Printing Press. Perhaps he might have printed the forms in the local market. There were no facts and circumstances to believe that the Civil Surgeon had supplied him with the Forms seized from his Genetic Clinic. However, it was a fact that before the inspection/visit in question, the Complainant never objected that the same Forms inspected by him were not in the prescribed Forms.

24. The accused never denied that he did not own the Genetic Clinic. However, he denied the responsibility to maintain and preserve the record as per the Rules 1996. The Civil Surgeon and

District Appropriate Authority had granted permission by letter dated 19.05.2005 to Dr. D.M. Jagtap, M.D., the Gynecologist, to run the machine situated in the Genetic Clinic of the accused by imposing the responsibility upon him to maintain and preserve the record as per the rules is not disputed. It was also undisputed that from January 2010, Dr. Jagtap stopped visiting the Genetic Clinic. The Complainant testified that at the time of the visit, the Sonography machine was available there and was in order. The last Form, F (patient consent form) was dated 27.09.2009, and the rest were blank. Dr. Jagtap last signed the monthly report for December 2009. Thereafter, the accused filled the forms as 'NIL'. However, the accused has put his signature on the blank forms of the monthly report.

25. In the facts and circumstances, the core question is who was responsible for complying with rule 9 of the Rules 1996.

26. Learned senior counsel for the petitioner has vehemently argued that since there was a specific condition granting the Registration Certificate that Dr. Jagtap would run the sonography machine, he was the only person responsible for complying with the Act 1994 and Rules 1996. He referred to a permission letter dated 19.12.2005 (Exhibit-137) to support his arguments. Referring to the proviso clause to sub-section 3 of Section 4 of the Act 1994, he vehemently argued that the person conducting the Ultrasonography on a pregnant woman shall keep the complete record thereof in the

Clinic in such a manner as may be prescribed. In addition, he has also referred to Rule 9 of the Rules 1996 and added that no specific person has been named in the Rule upon whom a duty was cast to maintain the register. In the Rule, the duty was cast upon the institution, not any specific person.

27. He relied on the case of Dr. Sai w/o Santosh Shiradkar Vs. The State of Maharashtra and Anr, 2016 S.C.C. Online Bom 8812.

In this case, it is held that sub-section 3 of Section 4 creates a statutory obligation on the person conducting Ultrasonography on a pregnant woman to keep a complete record thereof in the Clinic in such a manner as may be prescribed and any deficiency or inaccuracy found therein shall amount to a contravention of provisions Section 5 or Section 6 unless the contrary is proved by the person conducting Ultrasonography.

28. Herein the case, it has been alleged that Form-F were not filled up completely and the signatures of the pregnant woman were missing. A sample Form-F dated 19.04.2009 Exhibit-31, 21.06.2009 Exhibit-32 and Exhibit-33 were inspected, on which the signatures of the pregnant woman were not obtained. However, the declaration to that Form was signed by Dr. D.M. Jagtap.

29. A Similar question arose for consideration before the Bombay High Court in the case of Ranjeet Ghatge and Ors Vs. The State of Maharashtra and Ors, in Cri. Writ Petition Nos. 4194 and

4195 of 2014 decided on 17.08.2015. In that case, the Court held that, in my opinion, this proviso is to be read along with Rule 9(4) of the Rules. A minute details mentioned in Form-F are, in my opinion, to be filled in by the staff members of the Genetic Clinic. The person/Doctor conducting Ultrasonography on a pregnant woman will keep a complete record of the Ultrasonography done by him and not the details of the Form-F. Harmonious reading of proviso to Sub-section 3 of Section 4 of the Act read with Rule 9(4) of the Rules leads one to the conclusion that the clerical work is to be done by the staff members of the Genetic Centre and only the Doctor will maintain the record of the Ultrasonography done by him.

30. The Hon'ble Supreme Court in the case of Federation of Obstetrics and Gynecological Societies of India Vs. Union of India and others, 2019 (6) SCC 283, relied on by the prosecution, held that filling up Form-F was a condition precedent to undertake the test. It is not a clerical job. There is no barometer except Form-F to find out why the diagnostic test was performed. In case such important information, besides others, is kept vague or missing from the Form, it would defeat the purpose of the Act and safeguards provided thereunder, and it would become impossible to check violation of provisions of the Act. It has also been observed that Form-F has to be prepared and signed by either Gynaecologist/ Medical Geneticist/ Radiologist/ Paediatrician/ Director of the Clinic/ Centre/ Laboratory. Lastly, in paragraph no. 94,

it has been observed thus;

"94. There is no substance in the submission that the provision of Section 4(3) be read down. By virtue of the proviso to Section 4(3), a person conducting Ultrasonography on a pregnant woman is required to keep a complete record of the same in the prescribed manner and any deficiency or inaccuracy in the same amounts to contravention of Section 5 or Section 6 of the Act, unless the contrary is proved by the person conducting the said Ultrasonography. The aforementioned proviso to Section 4(3) reflects the importance of records in such cases, as they are often the only source to ensure that an establishment is not engaged in sex determination."

31. The above pronouncement of the Hon'ble Supreme Court in the above case was that the person conducting Ultrasonography on a pregnant woman is responsible for keeping the record as required under rule 9 of the Rules 1996.

32. The prosecution had a case the accused had given the undertaking that he would be responsible for complying with the mandate of law i.e. filling the Form-F and complying with it. Here, the factual difference was that the person in whose name the Registration Certificate was issued and the person conducting the Ultrasonography were different. The person eligible and qualified to do Ultrasonography left visiting the Genetic Clinic of the accused in January 2010. The accused did not possess the qualification to conduct the Ultrasonography on the pregnant woman. In this situation, the question is whether the accused could be held

responsible for complying with the statutory requirement.

33. Before advertizing to the controversy, let us examine whether the so-called undertaking given by the accused was really an undertaking to accept the responsibility to comply with statutory requirements and, if it is so, whether, by an agreement, the person who is not legally entitled to operate the machine and conduct the Ultrasonography on the pregnant women, be held responsible to failure to comply with the statutory requirements.

34. The said undertaking is placed on Ex 26. It is titled as 'Hamipatra'. Not the title but the contents of the document decide the nature of the document. Hence, the rule of evidence is that a document should be read as a whole to understand the real intention and terms of the contract, if any, of the parties to the document. The said document is written on a general stamp of Rs 100, purchased on 5.6.2007. It was addressed to the District Civil Surgeon, District Hospital, Osmanabad. Its contents are that he made a statement on oath that he is aware that legal action will be taken if the Sonography machine installed in his Hospital is operated by any person other than Dr. Jagtap. He would not interfere in those proceedings. Further, it is contended that he knew that PCPNDT Act came into force on January 1, 1996, as per the said Act, the following things i.e. violating the provisions of the said Act, Sex determination, declaring the sex of foetus, advertising the Sonography machine, not maintaining the

record is an offence. He would carefully avoid its violence. Reading the document as a whole, he did not undertake a responsibility to comply with the statutory requirements.

35. Section 3 sub-section 2 of the Act (before the amendment of 2003) provides that no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed who does not possess the qualification as may be prescribed. Rule 3 of Rules 1996 speaks of the qualifications of the employees for a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre. Sub-rule 1 permits the employment of a gynaecologist or paediatrician with six months experience or four weeks training in genetic counselling, or a medical geneticist. Sub-rule 3 specifically provides for employing a Gynaecologist with experience performing at least 20 procedures in chorionic villi aspirations per vagina or abdomen, etc. Reading these rules with the facts of the case that Doctor Jagtap, who was rendering services till 2010, it can safely be said that the accused was not a person qualified to conduct the ultrasonography/image scanning on a pregnant woman. Dr. Jagtap, who had rendered the services, was the only person competent to conduct the ultrasonography/image scanning on a pregnant woman.

36. The Court is of the view that any agreement in contravention of the law no person by undertaking saddled with the responsibility to comply with the statutory compliances and any such

agreement is no agreement in the eyes of the law. That apart, the law does not confer the powers on the Appropriate Authority to saddle the statutory responsibility on the person who does not possess the qualification and eligibility to conduct the Ultrasonography on a pregnant woman. Where the law has specifically provided for fixing the responsibility upon a certain person, none other may, by agreement or undertaking as happened in this case, accept the responsibility of complying with the mandatory provisions of rules to maintain and preserve the record. Hence, the prosecution case that the accused was responsible for maintaining and preserving the record as prescribed under Rule 9 of the Rules 1996 could not be believed. Therefore, it is difficult to fasten the responsibility upon the accused, being a registered owner of the Clinic, responsible for maintaining and preserving the record as prescribed under Rule 9 of the Rules 1996. Hence, this point is answered in negative.

As to point C :

37. The next limb of the argument of the learned senior counsel for the accused was, in the absence of any procedure conducted on the Sonography machine, sending the monthly report 'NIL' is not an offence.

38. The learned A.P.P. submits that every breach under the Act 1994 is an offence. Accepting the case of the accused that since January 2010, Dr. Jagtap stopped visiting the Genetic Clinic, he should

have surrendered the Registration Certificate as provided under Rule 6 sub-rule 6 of the Rules 1996.

39. It is an admitted fact since 2010, the Genetic Clinic of the accused ceased to function, and till the action against him, he did not surrender his Registration Certificate. However, he kept sending monthly reports as 'NIL', and the Appropriate Authority went on accepting the same without objection. Whether the Ultrasound procedure was done or not, the monthly reports were to be sent to the Appropriate Authority. Where no pregnant women were coming to the Clinic, naturally, the monthly report would be 'NIL'. The accused kept submitting reports indicating that he was avoiding the violation of the Act of 1994 and Rules 1996. There was no evidence the Sonography machine was used for sex determination during that period. Sending 'NIL' report would not be an offence, particularly when there was no evidence of violating the Act 1994 and Rule 1996 provisions and no use of the Sonography machine for sex determination.

40. As far as the not surrendering the Registration Certificate to the Appropriate Authority after the Clinic ceased to function due to the absence of an eligible and qualified person is concerned, in the peculiar circumstances and not prosecuting him for such an offence, the Court is of the view that the Appropriate Authority may exercise the powers under Section 20 of Act 1994.

41. In view of the above discussion, this point is answered in

negative.

As to Point D :

42. Another limb of arguments of the learned senior counsel for the petitioner is that both Courts erred in believing the recovery of the record from the Clinic of the petitioner, which was in violation of Section 30 of Act 1994 and Rule 12 of the Rules, 1996.

43. Section 30 of the Act 1994 deals with the power to search and seize records, etc. If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, or any other place, such Authority or any officer authorized in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under the said Act. The provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

44. Rule 12 of the Rules 1996 provides for the procedure for

search and seizure. Sub-rule 2 provides for preparing the seizure memo. The seizure of any document record, register, etc., from such Clinic shall be prepared in duplicate at the place of effecting the seizure. Both copies of such list shall be signed on every page by the Appropriate Authority or the officer authorized in this behalf and by the witnesses to the seizure. One copy thereof shall be handed over, under acknowledgement, to the person from whose custody the document, record, register, etc., have been seized.

45. The Complainant PW-1 has categorically admitted in his cross-examination that no independent witnesses were taken or called for preparing the list of the records seized from the custody of the accused. He deposed that it bears the signature of other officers who were members of the squad. The said document has been marked as Exhibit 29. The said list does not bear the signature of the appropriate Authority or the officer authorized in that behalf on each page. It also does not bear the signature of the accused on each page. Only on the last page, there were around six signatures who were the members of the squad and the signature of the accused was obtained on a paper just before the page on which they put their signatures.

46. The learned trial Court in the impugned judgment has observed that the Complainant is the person who initiated this proceeding, and Dr. Mule (CW-2) was a member of the squad who had conducted the raid on the basis of which the present proceeding was

initiated. However, these facts would not, *ipso facto*, render their evidence inadmissible, untrustworthy or unreliable unless any special reason, such as, a grudge against the accused, professional rivalry with accused, bias against the accused, etc., is shown. Both of them are public servants, and acts done by them were in their official capacity as such. Though the accused has denied the seizure of records from his Clinic and preparation of panchnama, he has not even denied the record produced in Court not belonging to his Clinic. In the circumstances, the accused now cannot escape from liability by saying that the records Art. A, B and C were not seized as per rules. It has also been observed that while determining the effect of such lapses i.e. not securing the presence of two independent witnesses and supplying the copies of panchnama, the object behind such provisions is to be taken into account. The provisions of Section 30(2) of the said Act, Section 100(4) of Cr.P.C. and Rule 12(2) and (3) seem to have been incorporated to ensure the genuineness of search and seizure procedure and to ensure that no fake search and seizure is made by the raiding squad, committee or the appropriate Authority. The accused did not deny the search of his record by the committee and seized record belonging to the Clinic, non-preparation of search, seizure and panchnama in presence of two independent witnesses as required by Section 30(2) of the said Act r/w Section 100(4) of the Cr.P.C. and non-providing copy of such panchnama to the accused as

required by Rule 12(2) and (3) of the Rules, would hardly make any difference.

47. Reading Section 30(2) and Rule 12(2) and (3), compliance with said section is mandatory. When the law describes or requires a thing to be done in a particular manner, it should be done in that manner and not at all. Definitely, there was a purpose in incorporating the mandatory provisions of having two independent witnesses at the time of the seizure of the record. The offences under the Act 1994 are serious and technical. Therefore, the Authority should have adhered to the prescribed procedure and rules. The appropriate Authority or a person authorized to search and seize the record were imposed a duty to draw a seizer panchanama in the presence of the independent witness, so they had to follow the rules prescribed strictly to avoid the shadow of doubt on the action taken by them. The mandate of law binds every person or Authority. Avoiding any mandatory provision of law may affect the rights of the accused. The rights conferred upon the accused under the law shall be protected. Therefore, the reasons assigned by the Judicial Magistrate, as discussed above, appear not legally correct and proper. It was a criminal trial, so every lapse on the part of the prosecution gives the benefit of the doubt to the accused. At the cost of repetition, it is stated that the provisions of Section 30(2) of the Act and Rule 12(2) and (3) of the Rules are mandatory. The appropriate Authority did not

follow these mandatory provisions. Hence, the prosecution case falls under the shadow of doubt, and the benefit of the doubt goes to the accused. Therefore, this point is answered in the affirmative.

48. The above discussion on law leads this Court to record the findings that both Court erred in holding that the offences against the accused were proved beyond reasonable doubt and erroneously convicted him. Both Judgments and Orders are erroneous and illegal. Hence, it warrants interference at the hands of this Court. The Court now proceeds to pass the following order :

ORDER

- (I) Criminal Revision Application stands allowed.
- (II) The Judgments and Orders of the learned Judicial Magistrate, First Class, Washi, District, Osmanabad passed in Regular Criminal Case no. 30/2011 dated 12.01.2016 and confirmed by the learned Additional Sessions Judge, at Bhoom, District, Osmanabad, in Criminal appeal No. 3/2016 dated 30.11.2021, stands quashed and set aside.
- (III) The accused Dr. Tukaram Ramkrishna Karde, is acquitted under Section 248(1) of the Criminal Procedure Code for the offences punishable under Section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 r/w Rule 9 (4) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996.

- (IV) The fine deposited by the accused shall be returned to him.
- (V) The Sonography machine seized in the case shall be returned to the accused if not disposed of by the Government. If disposed of, the price recovered on its sale, if any, shall be returned to the accused without interest within four months from today.
- (VI) The seized registers Article A, B, and C shall be preserved for ten months, or the appeal is preferred to the Hon'ble Supreme Court, whichever ever is earlier and then disposed of as per the Criminal Manual.
- (VII) A copy of this Judgment and Order shall be sent to the Maharashtra Medical Council for information.
- (VIII) The bail and surety bond of the accused and surety stands cancelled.
- (IX) The surety stands discharged.
- (X) Record and proceeding be returned to the Court of the learned Judicial Magistrate, First Class, Washi.
- (XI) The Criminal Application No. 2726 of 2022 stands disposed of in terms of the order dated December 8, 2021.
- (XII) Rule is made absolute in above terms.

(S.G. MEHARE. J.)