

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 399 OF 2022

Chandrashekhar M. Gattani and anr .. Applicant
Versus
State of Maharashtra and anr .. Respondents
...

Mr. Rajiv Patil, Sr Advocate a/w Mr. Saurabh Raut a/w Ms. Ankita Nishad i/b Ms. Vrushali L. Maindad for the applicant.
Mr. S.R. Agarkar, APP for the State.
Ms. Chaitrali Deshmukh, for respondent no.2

CORAM: BHARATI DANGRE, J.
DATED : 7th SEPTEMBER, 2023

P.C:-

1 The present application is filed by invoking Section 482 of Code of Criminal Procedure for quashing and setting aside the complaint wherein RCC No. 666 of 2014, lodged before the JMFC, Nashik for the offense punishable under Section 4(3), 19, 29(1), 23 of the Act, 1994, r/w rules 9 (4) (6), 9(8), 6(6) (7), 17(2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996.

2 Heard, learned senior counsel Mr. Rajiv Patil for the applicant and Ms. Chaitrali Deshmukh for the Respondent Nos. 2 to 4, at whose instance the action was carried out resulting into a complaint filed before the JMFC under the Pre-conception and Pre-natal Diagnostic Techniques Act.

 The complaint is filed against two applicants; the applicant no. 1 being a Radiologist and running his clinic in the name

and style of 'Dr. Gattani's Clinic' in Nashik. It is not in dispute that applicant no. 1 is qualified to be a Radiologist and has obtained the necessary registration certificate for his clinic as contemplated under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994. As far as the applicant no. 2, the wife of applicant No. 1 is concerned, she is working as a Chief Casualty Medical Officer in Mayo Institute.

The accusations leveled against them, which could be reflected in the complaint filed in the year 2014 is, that on 5/07/2011, the Authorized Officer visited the private clinic of the applicant No. 1 situated at Sathye Baugh, where applicant no. 2 was found operating an OPD, with a Sonography machine in the said clinic. It is the case of the respondent that the applicant no. 1 was not present and the applicant No. 2 was operating the machine and on actual inspection, she could not produce the Referral Slips, Consent form, case card etc.

The inspection report dated 5/07/2011 has recorded as under :-

“Record is not maintained and no books are made available”.

In the column of the person operating machine, the name of the applicant no. 2 is recorded as an unauthorized person.

This resulted in sealing of the clinic on the ground that unauthorized person Dr. Mrs. Shruti Gattani was operating the same. Even the Sonography machine was also sealed.

3 Thereafter on 13/07/2011, when the applicant no. 1 arrived back in the city, once again the team visited the clinic, and unsealed the clinic, though they did not remove the seal on the machine. The panchnama dated 13/07/2011 record that the

registration certificate of the clinic was taken in possession and even the X-ray and Sonography receipts as well as the consent forms were also seized. The exercise was carried out in presence of two independent medical practitioners and also on the applicant no. 1, being present.

This resulted in institution of the complaint by invoking relevant sections of the Act of 1994, to which the reference is made above.

4 This is just but another case, where the medical practitioners are subjected to persecution, causing lot of harassment, as it can be clearly seen that sub-section (3) of Section 4 necessarily contemplate conduct of pre-natal diagnostic test by a person, who is not qualified to do so and do not fulfill the conditions stipulated therein. Admittedly, respondent authority had no evidence to establish that the applicant no. 2 was operating the said machine and Ms. Deshmukh, who has filed the reply, as per the instructions, is also unable to offer any justification on that count. The fact, therefore, remains that the complaint under sub-section (3) of section 4 is not based on any material to establish that an unqualified person was operating the clinic, where the sonography machine was placed and which had already obtained the requisite registration under the Act.

Apart from this, as far as other violations, are concerned, it is also evident that on the second visit to the clinic i.e. on 13/07/2011, in presence of the applicant no. 1, the necessary documents were handed over and were taken into custody.

In fact, since it is the case of the applicant no.2, that she attended the clinic upon a call being received from an employee working in the clinic, she was not able to offer any documents as she was not operating the clinic and the report of inspection dated

5/07/2011 clearly records that these documents are not provided. But as soon as the applicant no. 1, arrived in the clinic, he made all these necessary documents available to the Inspection Team and they were seized on the second visit.

5 Surprisingly, though the incident reported is alleged to have taken place in the year 2011, almost after period of 3 years, the complaint is filed. This speaks of volumes.

It is true that the Act of 1994, which is enacted to prevent sex selection before or after conception and Pre-natal Diagnostic Techniques are to be restricted for the purpose of detecting genetic abnormalities or metabolic disorders and as such require strict implementation, but this definitely do not warrant such obsolete exercises, which but for harassment of the medical practitioners, do not yield any outcome.

It is no doubt true that the concerned appropriate Authority appointed under the Act under Section 17 is authorized to have inspection of the clinics to ensure compliance of the provisions of the Act and Rules and to ensure that no misdeeds, particularly the intended act which is prohibited i.e. sex determination is not carried out in clinics. However, it is surely not the prerogative of this authority to file frivolous complaints, merely on the basis of assumptions and surmises, which would ultimately result into grave humiliation to the professionals and also have its adverse impact on their clinics, since it is possible that a blemish will tarnish their image and would adversely effect the medical profession, as a whole.

6 With only hope and trust that the respondent authority, in future, shall entail caution, while exercising the power conferred upon them under the Act of 1994, it is expected that they shall keep in mind the avowed purpose of the legislation and avoid all such

unwarranted accusations against the professionals. The present case is a classic example, where it can be said that the respondents have clearly misused their powers.

Though I am convinced that the conduct shall result in imposition of cost upon the respondent authorities, I deem it appropriate to refrain myself from doing so, with the expectation that the observations made in the order would deter the public authorities from acting in such an arbitrary manner.

I deem it appropriate to exercise the power under Section 482 since the proceedings initiated against the applicant is nothing but abuse of process of law and amount to travesty of justice.

7 In the wake of the above, the application is allowed in terms of prayer clause (a) which reads thus:

“This Hon’ble Court be pleased to quash and set aside the impugned complaint bearing RCC no.666 of 2014 filed before Ld. Jt. Judicial Magistrate, First Class, Nashik for the offence punishable u/s 4(3), 19, 29(1), 23 r/w rules 9 (4) (6), 9(8), 6(6) (7), 17(2) of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 2003 and all the consequential proceedings initiated against instant Applicants;”

(SMT. BHARATI DANGRE, J.)