

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.717 OF 2012

Dr.Pramod Padwal
Age 50 yrs. Occ :service,
Appropriate authority and authorized
officer, Mira Bhayendar Municipal
Corporation, Chatrapati Shivaji Maharaj
Marg, Bhayander (W)

.... Applicant.
(Orig.Complainant)

Versus

1.State of Maharashtra

2. Sister Soniya
Age:adult, having address c/o :
St.Ann's Hospital, Kashimira Naka,
Kashi Mira, Mira Road(E)

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signed by
CHITRA
SANJAY
SONAWANE
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3. Dr. Ratan Banka,
Age: adult, Occ.Medical Practitioner,
402, Cosmos Salasar Garden,
Near GCC club, Mira Bhayandar Road,
Mira Road (E)

4. Dr. Sanjay Surana
Age : adult, Occ:Medical Practitioner,
201, Shree Sai Darshan,
Near Furniture Plaza, Near Hotel
Payade, Mira Bhayander Road, Respondents/
Mira Road (E) (Resp.2 to 4 org.Accused)
Mr N.R.Bubna, Advocate for Appellant.

Ms Keral Mehta a/w Niranjan Mundargi, Advocate for Respondent No.2.

Ms MR Tidke, APP for State.

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Coram : R.N.Laddha,J.

Reserved on : 30 August 2023

Pronounced on: 4 September 2023.

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Judgment :

This Appeal is directed against the Judgment and Order passed by the learned Judicial Magistrate, First Class, Thane, in Summary Case No.13912 of 2011, whereby the accused therein came to be acquitted of the offence punishable under Section 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'the Act').

2. The original Complainant, who was working as a Medical Officer of Health and was appointed as the appropriate authority under the Act, is the Appellant herein. The Accused, Respondents No.2 to 4, were operating a Diagnostic Centre called Saint Ann Hospital in Bhayander. It is alleged that the Accused did not maintain the records required by Rules 9(1) to 9(5) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short 'the said Rules') and did not submit

them as required by Rule 9(8) of the said Rules. On 30.06.2011, the Complainant visited the hospital run by the Accused and discovered that the records required by the Rules were not properly maintained. As a result, he seized the USG machine and records and filed a complaint against the Accused vide Summary Criminal Case No.13912 of 2011.

3. To prove its case, the prosecution examined the Complainant, Dr.Pramod Padwal, only. After the completion of prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). In reply, the accused pleaded innocence and false implication.

4. Mr NR Bubna, learned Counsel appearing on behalf of the Appellant, submitted that the learned trial Court committed a manifest error in acquitting the accused/respondents. According to him, the accused did not produce any record allegedly maintained by them, and they never disputed that the records seized by the Complainant were not their own. He argued that the trial Court was erred in not relying upon the records seized by the Complainant. It is submitted that the inspection and the seizure were carried

out in the presence of Dr.Priya Fadke and Dr.Rahul Bhure.

5. It is submitted that the accused did not properly maintained the seized Register as required by the Rules. The accused never claimed that the Register was tampered with or that it was different Register. It is submitted that no Panchanama was necessary, especially when the report had to be submitted as a statutory obligation.

6. Ms. Keral Mehta, learned Counsel for Respondents No.2 to 4, submitted that the complaint did not mention the names of Dr. Priya Fadke and Dr. Rahul Bhure, who were alleged to have accompanied the complainant during the inspection. There were no independent witnesses to corroborate the testimony of the complainant. Furthermore, the complainant did not prepare Panchanama for the seizure of the records and USG machine. She invited the attention of this Court to Section 30(2) of the Act, Rule 12 of the said Rules, and Sections 100 and 204 of the Cr.P.C. and submitted that failure to comply with mandatory requirements renders the complaint invalid. To substantiate her contentions, she relied upon the decision of this Court in *Bhiku Yeshwant Dhangat & Ors. Vs. Baban Maruti Barate & Anr.*¹

¹ 2000 SCC OnLine Bom 323.

7. In the present case, the evidence of the complainant shows that Dr.Priya Fadke and Dr.Rahul Bhure were present during the inspection. However, their names were not mentioned in the complaint and no effort was made to examine them or any other witness. As a result, there is no independent witness to corroborate the version of the complainant. Additionally, the complaint did not provide a list of witnesses with the complaint.

8. It is an admitted fact that no seizure Panchanama was prepared for the records and USG machine. This is particularly relevant given that Section 30(2) of the Act specifies that the Cr.P.C.'s search and seizure provisions should be applied to searches or seizures conducted under the Act. Section 100 of Cr.P.C. was enacted to provide greater certainty and security. The object under sub-section (4) of Section 100 Cr.P.C. to conduct the search in the presence of respectable inhabitants is to ensure that the search or inspection was appropriately conducted. However, in the instant case the Panchnama was not prepared and no efforts were made by the Complainant to secure the presence of witnesses.

9. The complainant claimed that he had conducted an inspection of the hospital on 30.06.2011, during which he sealed the USG machine and the records of the hospital. However, it can be seen from the cross-examination of the complainant that the USG machine had already been seized and sealed by the Corporation's officers on 29.06.2011. Additionally, the complaint was filed 25 days after the alleged seizure of the records and USG machine, and no explanation was given for the delay in filing the complaint.

10. Rule 12 of the said Rules requires that at least two independent witnesses be present during the search, examination, and preparation of a list of seized items in duplicate at the place of the seizure. Both copies of this list shall be signed on each page by the appropriate authority and the witnesses to the seizure. The provision states that if it is not possible to prepare the list at the location of the seizure, then the reasons for this must be recorded in writing. However, no such list was prepared nor were any reasons recorded as a result, there was a breach of Rule 12 of the said Rules.

11. The show cause notice (Exhibit 30), did not mention

the date of inspection as claimed by the complainant. It is neither clarified in the complaint nor in the evidence of the complainant how these accused Doctors were related to the hospital. Furthermore, the complainant did not state in his evidence that the machine he seized was capable of detecting the sex of the foetus.

12. It is a settled principle in law that an acquitted individual benefits from a dual presumption in their favour. The first presumption stems from the fundamental tenet of criminal jurisprudence that every individual is presumed innocent until proven guilty by a competent Court of law. The second presumption arises post acquittal, where the individual's innocence is not only presumed but it further fortified, validated, and amplified by the verdict of the trial Court.

13. In such circumstances, the trial Court, in my considered opinion, rightly found the Respondents No.2 to 4 not guilty of the offence for which they were charged.

14. Resultantly, this Appeal fails and is hereby dismissed.

[R.N.Laddha, J.]