



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APL) No. 1223 of 2023

Dr. Sangeeta d/o Kashinath Daf,
Aged about 49 years, Occ-Doctor,
r/o Bhande Plot Chowk, Nagpur.

... Applicant

- VERSUS -

Appropriate Authority under
PCPNDT Act,
Dr. Savita Ranjit Meshram,
Age Adult, Occ-Health Officer,
Nagpur Municipal Corporation,
Civil Lines, Nagpur.

... Non-applicant

Mr. R. K. Tiwari, Advocate for the applicant
Mr. J. B. Kasat, Advocate for the non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 19-10-2023

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With consent, the application is heard finally.

2. The applicant is seeking to quash the Criminal Complaint bearing R.C.C. No. 1520/2016 pending on the file of Judicial Magistrate First Class, Corporation Court No. 1, Nagpur filed under Section 28 and 31(1) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [for short 'PCPNDT Act'].

3. The complaint is said to have been filed by an appropriate authority (Dr. Savita wife of Ranjit Meshram) under PCPNDT Act, Municipal Corporation, Nagpur. She was, at the relevant time, working as Health Officer with the Corporation. Learned counsel for the applicant submits that this officer was not the appropriate authority in terms of Section 28 of the PCPNDT Act which reads thus :

“Section 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 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 organisation.

(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 subsection (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.”

4. Mere reading of the aforesaid provisions indicates that there has to be notification by the Central or the State Government as

regards appointment of the appropriate authority under PCPNDT Act. Admittedly in the present case, there is no such authorization, through notification.

5. Learned counsel for the Corporation submits that though there was no authorization at the time of filing of the complaint, the Government of Maharashtra has subsequently authorized this officer as an appropriate authority. He accordingly submits that the defect being curable, the complaint may not be quashed.

6. To my mind, this issue is no more *res integra*. The coordinate bench of this Court in the case of ***Dr. Anita w/o Ravi Chauhan Vs. Appropriate Authority under PCPNDT Act, Dr. Savita Ranjit Meshram*** in ***Criminal Application (APL) No. 174 of 2018*** by judgment dated 12-8-2021 has categorically held that the complaint under the provisions of PCPNDT Act cannot be filed without authorization under Section 28 of said Act. As could be seen, Section 28 provides that no Court shall take cognizance of offence under this Act except on a complaint made by an appropriate authority. It is thus obvious that before taking cognizance by the Court, the complainant will have to satisfy by way of pleadings in the complaint as also documentary evidence that he or she has been notified to be an appropriate authority under Section 28. In absence thereof, the

authority, who is not empowered to act as appropriate authority, cannot file the complaint and if the complaint so filed, there would arise no question of Court taking cognizance of the offence. This being so, the defect of absence of notification goes to the root of the matter in the sense the complaint itself cannot be filed. This defect cannot be said to be curable defect as argued by learned counsel Mr. Kasat. The argument is accordingly rejected.

7. The sum and substance of above discussion is that complaint is not maintainable for want of authorization and accordingly it stands quashed.

8. The petition is allowed in above terms.

(Anil L. Pansare, J.)

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