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Crl.O.P.No.3108 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.3108 of 2021

&

Crl. M.P.No. 1768 of 2021

Dr.T.Chandra

... Petitioner

Vs.

1.The Appropriate Authority
Salem City
Pre-Natal Diagnostic Techniques
(Regulation and Prevention of Misuse) Act
(Central Act) No.57 of 1994.

2.Dr. A.Elavarasi

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to C.C.No.293 of 2020 on the file of the Judicial Magistrate Court No.I, Mettur and quash the same as illegal, incompetent and abuse of process.

For Petitioner : Mr. R.Jayaprakash

For Respondents : Mr. A.Damodaran
Additional Public Prosecutor.



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ORDER

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The petition is filed to quash the complaint filed for the offences under Section 6 read with Section 23 (1) and Section 29 of the Preconception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (Central Act) No.57 of 1994.

2. It is alleged in the complaint that the petitioner had not maintained records prescribed under the Act, and hence there is a presumption under Section 4 (3) of the Act that she had committed violations under Section 6 read with Section 23 (1) and Section 29 of the Act.

3. The learned counsel for the petitioner submitted that the appropriate authority filed a complaint without conducting any investigation merely based on the complaint received by her; and that such a procedure is in violation of the provisions of the Act. The appropriate authority ought to have conducted an enquiry to ascertain the genuineness of the complaint against the petitioner. The learned



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counsel also relied upon the Judgement of the Bombay High Court reported in **2016 SCC OnLine Bom 8812 – Dr.Sai Vs. The State of Maharashtra**, in support of his submission that the appropriate authority must not act as a mere post office and must file the complaint only if he is satisfied on enquiry that the person has committed the offence under the Act. In the instant case, admittedly the appropriate authority had not conducted any such enquiry. Further, he submitted that the complaint is also silent on the nature of records that were not maintained by the petitioner in the Hospital concerned. In the absence of the said averments in the complaint, there cannot be any presumption against the petitioner under Section 4 (3) of the Act.

4. The learned Additional Public Prosecutor per contra submitted that in view of the presumption under Section 4 (3) of the Act, mere non-maintenance of the records is sufficient to prosecute the petitioner for the violations alleged in the complaint. It is for the petitioner to rebut the statutory presumption during the course of the Trial.



5. The learned Additional Public Prosecutor relied upon the Judgement of the Hon'ble Supreme Court, reported in **2019 (6) SCC 283 – Federation of Obstetrics and Gynecological Societies of India Vs. Union of India and others**, wherein, the Hon'ble Supreme Court upheld the validity of the Act. In the said Judgement, the Hon'ble Supreme Court held that by virtue of proviso to Section 4 (3), the person who does not keep complete record in the prescribed manner would be deemed to be guilty of contravention of Section 5 and 6 of the Act, unless the contrary is proved. The learned Additional Public Prosecutor therefore submit that it is for the petitioner to prove contrary before the Trial Court.

6. On perusal of the impugned complaint and hearing the learned counsel for the petitioner, this Court finds that there is no indication in the complaint that preliminary enquiry was conducted by the appropriate authority before initiating prosecution. The records seized by the respondents is found in paragraph no.4 of the complaint. It is for the prosecution to show before the Court as to what were the



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records not maintained by the petitioner and thereafter, it is for the petitioner to rebut the statutory presumption. This exercise cannot be done in a quash petition.

7. Hence, this Court is not inclined to entertain the quash petition. Accordingly, the petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

8. Since the petitioner is a lady aged about 67 years, her presence before the Trial Court is dispensed with unless the learned Judicial Magistrate I, Mettur considers her presence necessary for the progress of the Trial.

27.06.2023

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Index : Yes/No

Internet : Yes/No

Neutral Citation :Yes/No



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To
The Judicial Magistrate I,
Mettur.



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SUNDER MOHAN. J,

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