



Crl.O.P.No. 19948 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 19948 of 2021

and

Crl.M.P.Nos.10846 & 10847 of 2021

Dr.Shivani Balaram

.... Petitioner

Vs

Appropriate Authority,
For Sub District under
Pre-conception & Pre-Natal Diagnostic
Techniques (Regulation and Prevention of Misuse)
Act (Central Act) No.57 of 1994 &
The Chief Medical Officer,
Kurinjipadi, Cuddalore District.

.... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records of C.C.No.207 of 2017 pending on the file of Principal District Munsif cum Judicial Magistrate, Neyveli and quash the same as against the petitioner herein.

For Petitioner : Mr.Manoj Pandian

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.207 of 2017 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The case of the prosecution is that the respondent filed a private complaint and the same has been taken cognizance by the Trial Court in C.C.No.207 of 2017 for the offence under Section 28(1) of the Pre-conception & Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 and Pre-conception & Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules 1996 and for the offences under Section 3B, 18(1), (5) and Rule 3A (1) of PCPNDT Act Rules 1996 punishable under Sections 23(1) of the Pre-conception & Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (Central Act) No.57 of 1994.



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4. The crux of the complaint is that on 27.12.2016, the respondent, along with Joint Director of Medical and Rural Health Services, Cuddalore, State Inspection team members and Sub District Appropriate Authority, Kurinjipadi, had inspected the private pharmacy, viz., Sun Pharmacy, situated at Main Bazar, Block – 19, Neyveli and seized an unregistered Ultra Sound Machine. The said facility is not registered by the Appropriate Authority under PCPNDT Act to operate Ultra Sound Machine in the inspected place viz., Sun Pharmacy, Neyveli. It is in violation of the provisions under Section 3B, 18(1), (5) of PCPNDT Act 1994 and Rules 3(A) 1 of PCPNDT Rules 1996.

5. The first accused is the owner of the private pharmacy, which was found in possession of Ultra Sound Machine, without any license, in an unregistered facility. On enquiry with staff members of Sun Pharmacy and based on the statement recorded by them, it came to light that the second accused in the Sun Pharmacy had used the above seized Ultra Sound Machine in her consulting room at Main Bazar, Block – 19, Neyveli. She had obtained license to operate the Ultra Sound Machine in the facility at No.15, Gandhi Nagar, Neyveli.



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Therefore, she violated the provision under Sections 3(3) and 18(5) of the PCPNDT Act. Hence, the complaint.

6. The learned counsel appearing for the petitioner would submit that there are totally two accused, in which the petitioner is arrayed as A2. The first accused died. The petitioner is a Doctor by profession and qualified as MBBS., DGO., She is one of the consulting Doctors of Sun Pharmacy, situated at No.3/5, Main Bazzar, Block-19, Neyveli. The petitioner was also working as a consulting Doctor at Sri Janani Scan Centres at No.15, Gandhi Nagar Church Road, Neyveli. She had purchased Ultra Sound Machine in the brand name of “Welcare” in the year 2012 and also obtained license to use the machine for a period from 18.12.2012 to 17.12.2017. However, in the year 2014, it was found defective and was not in good working condition. Therefore, she purchased a new machine on 22.08.2015. The old defective machine was packed and kept ready to be taken by the Global Imaging Systems, from whom Sun Pharmacy had purchased the said machine. It was kept in dismantled position and sealed in a carton box.



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7. In the meanwhile, the respondent made inspection.

Therefore, it was not in working condition. There is absolutely no material to show that the petitioner is working in all three pharmacies of the first accused. After receipt of the show cause notice, the petitioner submitted a detailed reply on 06.01.2017 stating that it was already sold out and it was not in working condition. It was kept in a sealed carton box. She never practiced in the said machine in the premises of the first accused pharmacy.

8. On receipt of the reply, the Appropriate Authority did not pass any orders as contemplated under Section 17(a) of the PCPNDT Act. It is a fatal to the case of the prosecution. No provision is attracted as against the petitioner. All the contravention, were allegedly made only by the first accused. Insofar as the petitioner is concerned, she has nothing to do with the contravention as alleged by the prosecution. The only allegation as against the petitioner is that she practiced the said machine without any license. There is no material produced by the prosecution in order to attract all the contravention as alleged by the prosecution.



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9. The learned Government Advocate (CrI.Side) appearing for the respondent submitted that on investigation, it was found that the machine in question was kept in the first accused pharmacy. Admittedly, the petitioner is one of the consulting Doctors at Sun Pharmacy. She is also qualified with M.B.B.S., D.G.O. Though she had license to practice the said machine at Sri Janani Scan Centre, she had no license to practice the machine at 3/5, Main Bazzar, Block – 19, Neyveli – 3. That apart, the entire trial has been over. At the time of deliver of judgment, the Trial Court noticed that no charges were framed. Therefore, the Trial Court has framed the charges. Hence, this petition.

10. There are totally two accused, in which, the petitioner is arrayed as second accused. She is qualified with M.B.B.S., D.G.O. She has license to use the Ultra Sound Machine at Sri Janani Scan Centre at No.15, Gandhi Nagar Church Road, Neyveli. The respondent and other team inspected the premises of the first accused and found the unregistered Ultra Sound Machine. The first accused is the owner of the pharmacy and he was in possession of the Ultra Sound Machine, thereby, the accused contravened the provision under Section 3B, 18(1), (5) of



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PCPNDT Act 1994 and Rule 3(A) 1 of PCPNDT Act Rules 1996. It is relevant to extract the provision under Section (1) of the PCPNDT Act 1994, which is as follows :

“Section 18(1) “No person shall open any Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic, including Clinic, Laboratory or Centre having Ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection, or render services to any of them, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2002 unless such centre, Laboratory or clinic is duly registered under the Act”.

11. Admittedly, the Ultra Sound Machine was in possession of the first accused, though the petitioner was one of the consulting Doctor of the Sun Pharmacy. Therefore, the contravention of Section 18(1) is not applicable to the petitioner. It is relevant to extract the provision under Section 18(5) of the said Act is as follows :

“Section 18(5) – No Genetic Counseling Center, Genetic Laboratory or Genetic Clinic shall be registered under this Act unless, the Appropriate



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Authority is satisfied that such Center, Laboratory or Clinic is in position to provide such facilities, maintain such equipment and standards as may be prescribed”.

12. It is also applicable only as against the first accused and not against the petitioner, who was a consulting Doctor of Sun Pharmacy. A perusal of the complaint reveals that the petitioner has been implicated as an accused only based on the statement recorded from the staff members of Sun Pharmacy, Neyveli. Whereas, the respondent failed to cite any one of the employee as witness to the complaint. In fact, no statement was recorded from any of the employee. Whereas, only on the statement recorded from the staff members of Sun Pharmacy, the petitioner has been implicated as an accused as if she used the said Ultrasound Machine in her consulting room in Sun Pharmacy.

13. The specific case of the petitioner is that she has license to use the Ultrasound Machine in Sri Janani Scan Centres, No.15, Gandhi Nagar Church Road, Neyveli. However, the said machine got repaired and she sold out the said machine in favour of Global Imaging System. In the meanwhile, it was kept in Sun Pharmacy in a sealed box,



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that too at a dismantled position. There is no evidence to show that the machine was under working condition and the petitioner is practicing with the said machine.

14. On receipt of the show cause notice, the petitioner submitted a detailed reply on 06.01.2017. However, after receipt of the reply from the petitioner for the show cause notice, the authority concerned did not pass any order. As per Section 17A of the Act, the appropriate authority shall have the powers to summon any person who is in possession of any information relating to violation of the provision of this Act or the Rules. However, no action has been taken by the appropriate authority as against the petitioner. It shows that the reply submitted for the show cause notice was accepted by the authority concerned.

15. In this regard, the learned counsel appearing for the petitioner relied upon the Judgment of the Hon'ble High Court of Telugana in CrI.O.P.No.15649 and 15793 of 2014, dated 17.02.2022, held as follows :-



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“27. The role and power of Appropriate Authority is clearly mentioned under Section 17 and 17-A of the PNDT Act. By the contents of those provisions, it is clear that the role of the Appropriate Authority and the part to be played by it is exhaustive and it cannot just receive information in the form of a complaint or just act suo motu and lodge a complaint without proper verification. It is not out of place to mention that if proper enquiry is conducted and the case is investigated into, the collection of material would even help the Appropriate Authority to place sufficient proof before the Court of law and to get the Accused convicted. But without doing so i.e, without exercising the power of enquiry, without enquiring into the allegations levelled and the information received, if the complaint is lodged and criminal proceedings are initiated, the same may not yield the desired result of the Appropriate Authority. Further, unhesitatingly, it can be said that the person roped in as an accused would be put to enormous loss and hardship. That is not the intention of the Legislature which has passed the PNDT Act.”

16. Thus, it is clear that the role of the Appropriate Authority and the part to be played by it is exhaustive and it cannot be just receive information in the form of a complaint or just act *suo motu*



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and lodge a complaint without proper verification. Therefore, in order to prevent abuse of process of Court and also to secure the ends of justice, this Court would not hesitate to invoke the power under Section 482 of Cr.P.C. to quash the entire proceedings on the allegations made in the compliant if it failed to make out a prima-facie case to proceed as against the petitioner.

17. In view of the above, the proceedings in C.C.No.207 of 2017 pending on the file of Principal District Munsif cum Judicial Magistrate, Neyveli, is hereby quashed. Accordingly, this Criminal Original Petition stands allowed.

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Internet: Yes
Index : Yes/No
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To
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1. The Principal District Munsif cum Judicial Magistrate,
Neyveli
2. The Appropriate Authority,
For Sub District under
Pre-conception & Pre-Natal Diagnostic
Techniques (Regulation and Prevention of Misuse)
Act (Central Act) No.57 of 1994 &
The Chief Medical Officer,
Kurinjipadi, Cuddalore District.
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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