



Crl.O.P(MD)Nos.19077 of 2018 and 1707 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2023

CORAM:

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD)Nos.19077 of 2018 and 1707 of 2019

and

CrI.M.P(MD)Nos.8548 & 8549 of 2018 and 918 of 2019

Crl.O.P(MD)No.19077 of 2018:

Dr.Mary Nirmala Jayaraj

.. Petitioner/Accused No.2

Vs.

Appropriate Authority for District
Under Pre-conception & Pre-Natal
Diagnostic Techniques (Prohibition of
Sex Selection) Act (Central Act)
No.57 of 1994 &
The Joint Director of Medical
and Rural Health Services,
Thiruchirappalli.

.. Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code
of Criminal Procedure, to call for the records pertaining to the S.T.C.No.



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565 of 2018 on the file of the Judicial Magistrate No.IV, Trichirappalli
and quash the same as against the petitioner.

For Petitioner : Mr.B.Prasanna Vinoth

For Respondent : Mr.T.Villavankothai
Additional Government Pleader

Crl.O.P(MD)No.1707 of 2019:

G.Ravikumar

.. Petitioner/Accused No.1

Vs.

Appropriate Authority for District
Under Pre-conception & Pre-Natal
Diagnostic Techniques (Prohibition of
Sex Selection) Act (Central Act)
No.57 of 1994 &
The Joint Director of Medical
and Rural Health Services,
Thiruchirappalli.

.. Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code
of Criminal Procedure, to call for the records relating to the impugned
complaint in S.T.C.No.565 of 2018 on the file of the learned Judicial
Magistrate No.IV, Trichy and quash the same.



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For Petitioner : Mr.A.Robinson
for Mr.M.Saravanan

For Respondent : Mr.T.Villavankothai
Additional Government Pleader

COMMON ORDER

Since these two petitions are arising out the same complaint in S.T.C.No.565 of 2018 on the file of the learned Judicial Magistrate No.IV, Trichy, these two petitions are taken up together for hearing and disposed of by way of common order.

2.The respondent in these quash petitions preferred a complaint under Sections 2(m), 3(2) r/w 25 of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, (hereinafter referred to as “the Act”) stating that the petitioner in Crl.O.P(MD)No.1707 of 2019 was conducting a scan centre in the name and style of 'Krishna Advanced MRI and CT Scan Centre'. In the said



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scan centre, the petitioner in Crl.O.P(MD)No.19077 of 2018 worked as a doctor cum sonologist. The respondent authorities inspected the premises on 17.03.2018 and found that the said doctor did not possess required qualification and the said doctor's name was not displayed in the scan centre. On the basis of the said violation, they initiated the complaint before the learned Judicial Magistrate No.IV, Trichy. The learned Judicial Magistrate taken cognizance in receiving summons in S.T.C.No.565 of 2018 for the alleged offence under Sections 2(m) and 3(2) r/w 25 of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

3. The learned counsel for the petitioner in Crl.O.P(MD)No.19077 of 2018 submitted that the petitioner is the doctor and sonologist and she has the required qualification and certificate and the same was registered in the State Tamilnadu Medical Council, Madras. Without verifying the same, the complainant initiated the proceedings. Apart from that for similar charges, the department proceedings was initiated vide charge



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memo in Ref.No.633/A4/2018 dated 06.02.2018. The said charge memo was quashed by this Court on finding that he possessed the qualification and undergone the certificate course and also obtained the certificate and the same was registered as per law. The learned counsel for the petitioner in Crl.O.P(MD)No.1707 of 2019 submitted that there was no violation as per the Act as stated in the complaint and they employed the petitioner in Crl.O.P(MD)No.19077 of 2018 with all necessary qualifications and she is a registered practitioner as per law. Hence, both counsel prayed for quashing the proceedings.

4. The learned counsel for the respondent in both petitions submitted that the learned trial Judge after considering the materials has rightly taken cognizance and the same does not warrant any interference of this Court and hence, there was no ground to quash the proceedings.

5. Considering the rival submissions, this Court, before going into the merit of the case to extract the following relevant provisions of



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Sections 2(m) and 3(2) of the Act as under:

"2.Definitions.- In this Act, unless the context otherwise requires:-

(m) “registered medical practitioner” means a medical practitioner who possesses any recognised PNDT Act, 1994 & Amendments medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, (102 of 1956.) and whose name has been entered in a State Medical Register;

3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.- On and from the commencement of this Act,—

(2) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess qualifications as may be prescribed;"

6. Before going to consider the abvoe provisions, it is pertinent to note that the charge memo issued against the petitioner in Crl.O.P(MD)No. 19077 of 2018 with similar allegation was quashed by



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this Court in the case of ***Mary Nirmala Jayaraj v. Joint Director of Medical and Rural***, reported in ***2019 SCC OnLine Mad 18738***. The relevant paragraph is extracted hereunder:

“8.The petitioner herein has been practicing as a Sonologist right from the year 1997. She had undergone the certificate course in diagnostic ultrasound imaging conducted by K.G.Hospital from 15.04.1996 to 11.05.1996. The respondent is therefore not justified in judging the writ petitioner's credentials on the strength of subsequently incorporated Rules. The petitioner in the typed set of papers has enclosed the certificate issued by the Head of the Department of Ultrasound Cancer Institute, Adyar, Chennai on 11.02.2004 certifying that the writ petitioner worked in the cancer institution as a Sonologist in the department of Ultrasound for five years from February, 1997 to February, 2002.”

7. In this case, upon perusal of the record and also the order of this Court stated supra, without verifying the qualification certificate of the petitioner in Crl.O.P(MD)No.19077 of 2018, in hasty manner, the



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inspection was conducted and the complaint was registered. Upon perusal of the provisions and the documents submitted by the learned counsel for the petitioners including the above said order passed by this Court, this Court find that the above allegation is not correct. The doctor has the necessary qualification as well as registration certificate vide document dated 27.12.1984 (Registration Certificate with Tamilnadu Medical Council) and 21.05.1986(Certificate issued by the Medical Council of India) and she also obtained certificate from the K.G.Hospital Research and Post Graduate Centre, which is a recognized institute for the issuance of certificate.

8. Look into another angle, when the department proceedings on the similar allegation was initiated pending criminal case and ended with exoneration of charges on merits, the continuation of the criminal proceedings on the similar set of allegation with same materials has no legs to stand and the same is fortified by the following principle laid down by the Hon'ble Supreme Court in **2020 (9) SCC 636 [Ashoo**



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Surendranath Tewari v. CBI] :

“12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B.,

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

.....

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

15. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22-12-2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak.” [emphasis supplies]

9. So, in this case, the materials collected by the prosecution agency is not even enough to prove the charges framed against the petitioner in



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the departmental proceedings and hence, this Court find that the materials are not sufficient to meet the standard of proof in criminal proceedings namely, beyond reasonable doubt. So, the chance of conviction in the criminal trial involving the same facts appear to be bleak and hence, this Court is inclined to quash the proceedings initiated against the petitioners.

10. In the result, these Criminal Original Petitions are allowed and the proceedings in S.T.C.No.565 of 2018 on the file of the learned Judicial Magistrate No.IV, Trichy, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No

Internet: Yes/No

Index : Yes/No

PJL

Note:Issue on 05.05.2023.



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Trichirappalli
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No.57 of 1994 &
The Joint Director of Medical
and Rural Health Services,
Thiruchirappalli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J.

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