

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COC-167-2018 (O&M)
Date of decision: 15.03.2023

Dr. Chander Parkash Malhotra

... Petitioner

Vs.

Lalit Kumar Sharma and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ranjan Lakhanpal, Advocate
for the petitioner.

Mr. Pawan Kumar Longia, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

The petitioner alleges violation of the order dated 02.07.2014
passed by the Hon'ble Supreme Court in **Crl. Appeal No.1277 of 2014**
(Arnesh Vs. State of Bihar and anr.).

It is stated that the petitioner is a doctor and on 15.12.2016, a team
constituted under Pre-Conception & Pre-Natal Diagnostic Techniques Act,
1994 (for short 'PC&PNDT Act') raided Manav Sewa Diagnostic Centre,
Sector-6, Panchkula, where the ultrasound of a patient namely Poonam was

conducted and finding illegalities, the petitioner and his assistant Ms. Rishu Sharma were arrested.

Learned counsel for the petitioner submits that in terms of directions of the Hon'ble Supreme Court in **Arnesh's** case (supra), since maximum punishment provided under PC&PNDT Act is less than 07 years, the petitioner could not have been arrested, as no notice under Section 41 Cr.P.C. was given to him.

In support of his arguments, learned counsel has relied upon certain orders of different High Courts. In **Contempt Application (Crl.) No.5 of 2022, decided on 18.08.2022** by the High Court of Allahabad, in a case where the accused was arrested without issuing notice under Section 41-A Cr.P.C., contemnor was held guilty and awarded simple imprisonment for a period of 14 days with a fine of Rs.1,000/-, however, the order nowhere reflects under what offence, the proceedings were initiated. In **Contempt Case (C) No.480 of 2020 titled as Rakesh Kumar Vs. Vijayanta Arya (DCP) and ors., decided on 07.12.2021**, High Court of Delhi, again for not issuing notice under Section 41-A Cr.P.C. before arresting a person, awarded simple imprisonment of 01 day with fine of Rs.2,000/- for the allegations of criminal breach of trust. In **Contempt Case No.826 of 2021 titled as Jakka Vinod Kumar Reddy and ors. Vs/ A.R. Srinivas and ors., decided on 06.06.2022**, High Court of Telangana, in a case arising out of Sections 3 & 4 of Dowry Prohibition Act

read with Sections 498-A, 506 and Section 30 of Arms Act, held the police officer guilty and sentenced him imprisonment for 04 weeks along with fine of Rs.2,000/-.

To be contrary, learned State counsel has relied upon a judgment of the Hon'ble Supreme Court in **Satender Kumar Antil Vs. Central Bureau of Investigation and anr., SLP (Crl.) No.5191 of 2021, decided on 11.07.2022**, to submit that while referring to **Arnesh's** case (supra), the Hon'ble Supreme Court has defined four categories of offences, which are as under: -

“Categories/types of offences

(A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S. 37), PMLA (S. 45), UAPA (S. 43D(5), Companies Act, 212(6) etc.

(D) Economic offences not covered by Special Acts.”

It is submitted that with regard to category (A), offences where punishment is 07 years or less not falling in categories (B) & (D), the police officers are required to follow the procedure under Section 41-A Cr.P.C., however, with regard to category (C), offences punishable under Special Acts

containing stringent provisions for bail, the Hon'ble Supreme Court has recorded the following findings: -

“Special Acts (Category C)

64. Now we shall come to category (C). We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

It is further submitted that even the offence under PC&PNDT Act is a serious offence against the society and would be falling under Category (C).

Learned State counsel has further relied upon **State of Madhya**

Pradesh Vs. Ram Singh, 2001 (1) RCR (Crl.) 784, to submit that it has been held by the Hon'ble Supreme Court that offence under Section 13 of Prevention of Corruption Act, in a civilized society, is a disease like cancer and plague and its vires is compared with HIV leading to AIDS being incurable.

Learned State counsel has also relied upon **Voluntary Health Association of Punjab Vs. Union of India and ors., 2013 (2) RCR (Civil) 287**, wherein the Hon'ble Supreme Court, regarding female foeticide, held as under: -

“When a female foeticide takes place, every woman who mothers the child must remember that she is killing her own child despite being a mother. That is what abortion would mean in social terms. Abortion of a female child in its conceptual eventuality leads to killing of a woman. Law prohibits it; scriptures forbid it; philosophy condemns it; ethics deprecate it, morality decries it and social science abhors it. Henrick Ibsen emphasized on the individualism of woman. John Milton treated her to be the best of all God's work.”

It is thus submitted by learned State counsel that even otherwise, there is no violation of directions of the Hon'ble Supreme Court in **Arnesh's** case (supra), as proper procedure was followed by the team, who conducted the raid.

Learned State counsel, on the basis of affidavit of Inspector, State Crime Branch, Panchkula, submits that the petitioner is a habitual offender and on an earlier occasion also, he was convicted for violating the provisions of PC&PNDT Act and in the instant FIR No.500 dated 15.12.2016 under Sections 3, 4, 5, 6, 23, 29 of PC&PNDT Act and Sections 420 & 120-B IPC, the petitioner was formally arrested by the police. It is further submitted that directions issued by the Hon'ble Supreme Court in **Arnesh's** case (supra) were duly complied with, as checklist was prepared and before arresting him, checklist (Annexure R-1/1) was given to him. It is also submitted that after completing the investigation, the petitioner was arrested, therefore, there is no violation of judgment of the Hon'ble Supreme Court in **Arnesh's** case (supra)

Reply by way of affidavit of Deputy Civil Surgeon, Panchkula is on record, in which it is stated that in pursuance of directions of the District Appropriate Authority under PC&PNDT Act, Panchkula, a team was constituted to conduct the raid on receiving the complaint. It is further stated that when the team conducted the joint raid, many illegalities were found and a patient namely Poonam was undergoing the ultrasound without following the procedure, therefore, information was sent to SHO, Police Station Sector-5, Panchkula for registration of FIR against the petitioner and his accomplices and later on, he was arrested at the spot finding that sex detection racket involving five offenders from various fields was operating. A decoy customer was sent

and thereafter, the racket was unearthed and by following a proper procedure under the provisions of PC&PNDT Act, registration certificate of M/s Manav Sewa Ultrasound Scan Centre was suspended. It is also stated that the Centre was being operated in gross violation of the provisions of PC&PNDT Act. It is next stated that even a formal complaint has already been filed.

It is further stated in the affidavit that the petitioner is a habitual offender and on an earlier occasion, with regard to similar complaint, he stands convicted by the Chief Judicial Magistrate, Panchkula vide judgment dated 14.08.2013 under Section 29 of PC&PNDT Act read with Rules 9(4) & 18(viii) and was sentenced to undergo imprisonment for a period of one month along with fine of Rs.1,000/-.

After hearing learned counsel for the parties and going through the affidavits of the Deputy Civil Surgeon, Panchkula and Inspector, State Crime Branch, Panchkula, the petitioner could not make out that there is any violation of directions of the Hon'ble Supreme Court in **Arnesh's** case (supra), therefore, I find no merit in the present petition, for the following reasons: -

- (a) In none of the case relied upon by learned counsel for the petitioner, offence was under PC&PNDT Act and offences were falling under the provisions of IPC only.
- (b) In **Satender Kumar Antil's** case (supra), the Hon'ble Supreme Court held that offence punishable under the Special Acts like

NDPS Act, PMLA, UAPA, Companies Act etc., as an objective behind it followed by rigor imposed. Since the offence is falling under Special Act containing stringent provisions, there is no violation by the respondent.

For the reasons recorded above, the present contempt petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

15.03.2023
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No