

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

204.**CRM-M No.1120 of 2023 (O&M)**

Decided on:11.12.2023

Dr. Rachna Raina

... Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhishek Sethi, Advocate and
Ms. Richa Sethi, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.117 dated 06.02.2022 registered under Sections 29, 5 (2), 6 (b) of the Preconception and Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred to as the PNDT Act) and Section 120-B IPC registered at the Police Station Krishna Gate, Thanesar, District Kurukshetra (Annexure P-1) and the subsequent proceedings arising therefrom.

FACTUAL BACKGROUND

2. In brief, the facts are that on 04.02.2022, the Civil Surgeon-cum-Chairperson, District Appropriate Authority, Karnal received a secret information to the effect that illegal sex determination was being done in District Kurukshetra. Thereafter, the Deputy Civil Surgeon (PNDT, Karnal) arranged a pregnant female (decoy) through a social worker and got a deal done with tout namely Babita for sex determination of the foetus, who demanded ₹40,000/- to which the said officer agreed. Thereafter, on 04.02.2022, the Civil Surgeon-cum-Chairperson, District Appropriate

Authority, Karnal constituted a team comprising of Dr. Shinu Chaudhary, Deputy Civil Surgeon (PC PNDT), Karnal, Dr. Krishankant, Senior Medical Officer, Traudi and Dr. Paramjeet Singh, Medical Officer, Primary Health Centre, Popda, which team gathered in the office of Civil Surgeon, Karnal on 05.02.2022 at 8.30 AM and prepared a detailed note regarding currency notes worth ₹40,000/- and obtained the receipt thereof on the memo from the decoy. Apart from that, signature of decoy Mahajayi on a consent letter was also obtained. Tout Babita telephonically asked the decoy to remain present at Ghoda Chowk, Karnal at 9.30 in the morning. At about 9 AM, the team along with decoy Mahajayi proceeded for conducting the raid in two private vehicles and one government vehicle. The social worker and decoy Mahajayi reached Ghoda Chowk in a private vehicle and started waiting for tout Babita. In the meantime, the team so constituted remained present in the near vicinity along with police officials. At about 9.40 AM, the decoy pregnant woman met the tout and thereafter, the decoy Mahajayi, the social worker and tout Babita proceeded towards Kurukshetra in the same private vehicle. The team along with police officials followed them in one private and one government vehicle. The Civil Surgeon, Karnal informed the Civil Surgeon, Kurukshetra regarding the raid, in pursuance of which the Civil Surgeon, Kurukshetra constituted a team comprising of Dr. Gaurav Bansal, Nodal Officer, PNDT, Dr. Rishi, Dental Officer, Dental Officer, CHC Baban and Sh. Manoj Kumar, MPHW (Male), District Malaria Office, Kurukshetra and instructed the said team to co-operate with the Karnal team. At about 10.30 AM, the Karnal team reached at the old bus stand, Kurukshetra where the Kurukshetra team met the Karnal team. After about 10 minutes, tout Babita along with decoy Mahajayi alighted and started walking towards Peepli and went inside a private hospital namely Sparsh Surgical Laparoscopic and Maternity Hospital, Kurukshetra run by Dr.

Rachna Raina, MBBS, PG Diploma, Obst.-Gynae. At about 11.30-11.45 AM, tout Babita along with decoy Mahajayi came out of the said hospital and signalled the team in a predetermined manner and in response, both the Karnal and Kurukshetra teams along with police officials nabbed the tout Babita on the spot and recovered the amount of ₹34,000/- (68 notes of denomination of ₹500/-) from her person and also seized the ultrasound report of the decoy pregnant woman issued by the private hospital. Thereafter, record of the Sparsh Surgical Laparoscopic and Maternity Hospital, Kurukshetra was checked by both the teams. On being asked to identify her signatures on Form-F, the decoy Mahajayi identified the same. On enquiry, she told that on entry in the hospital, she was asked by the receptionist to get her slip prepared and the tout said that the payment of the ultrasound as well as the registration would be made directly to the doctor and thereafter, both of them went to the room of the doctor where the tout paid an amount of ₹1000/- out of ₹35,000/-. Thereafter, the doctor conducted the ultrasound examination of the decoy in the presence of the tout. The decoy also identified the doctor who conducted the ultrasound. After coming out of the doctor's room, the tout told the decoy that she had a talk with the doctor, who disclosed the sex of the foetus as female and if she is not willing to continue with her pregnancy, then she has to deposit ₹25,000/- for termination of the same. The team in the presence of the police recovered two currency notes of denomination of ₹500/- from the purse of Dr. Rachna Raina, who is a gynaecologist. The decoy Mahajayi returned an amount of ₹5000/- to the team and said that she had resettled the deal with tout Babita for an amount of ₹35,000/- only. The Karnal team deposited the returned amount of ₹5000/- in the PNDT account and upon comparison of the recovered currency notes, they tallied with the memo prepared. Thereafter, the

team sealed the amount of ₹34,000/- recovered from the tout as well as ₹1000/- recovered from the doctor in two different envelopes and marked them with two seals DAA/KKR. The ultrasound machine of the hospital was also sealed appending the seal DAA/KKR at four places. The other record was also sealed and statements of the witnesses were recorded and an FIR was sought to be registered against the doctor and the tout under the provisions of PNDT Act and IPC. Ultimately, FIR No.117 dated 06.02.2022 was registered under Sections 29, 4, 5(2), 6 (b) of the PNDT Act and Section 120-B IPC at Police Station Krishna Gate, Thanesar, District Kurukshetra, which is sought to be quashed in the present petition.

CONTENTIONS

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is mainly aggrieved by the registration of the FIR supra. Section 41 of the Indian Penal Code read with Section 4 (2) of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) provides that all offences under any other law are to be investigated, inquired into and otherwise dealt with in accordance with the provisions of the said, 'special law' in so far as they are repugnant to the Code. A bare perusal of the aforesaid provisions leads to only logical interpretation that by enacting the provisions of PNDT Act, the provisions of Indian Penal Code are expressly excluded. Section 28 of the PNDT Act makes it abundantly clear that no Court shall take cognizance of an offence under this Act except on a complaint made by the Appropriate Authority or any officer authorized in this behalf by the Central Government or the State Government, as the case may be.

4. Section 2 (d) of Cr.P.C. defines the term 'complaint' as any oral or written allegation made to a Magistrate with a view to taking action under the Code. The definition as provided under Section 2 (d) of the Cr.P.C. does not

include a police report, which is further defined in Section 2 (r) of Cr.P.C., which means a report forwarded by the Police Officer to a Magistrate under sub-section 2 of Section 173 Cr.P.C. The statutory scheme under the PNDDT Act and the Cr.P.C. provides that the prosecution under the PNDDT Act can only be launched by way of a complaint case and an FIR cannot be registered under the provisions of the PNDDT Act. Therefore, the impugned FIR and all the subsequent proceedings arising therefrom are *void ab initio* and are liable to be quashed. Learned counsel for the petitioner further relies upon the judgment passed by the Hon'ble Supreme Court in ***Delhi Administration Vs. Ram Singh AIR 1962 SC 63*** to submit that if the power to investigate has been exclusively bestowed upon a special person/body then only the authorized person can conduct investigation. The relevant extract of the said judgment as emphasised upon by the counsel for the petitioner is reproduced as under:-

“22. If the power of the special police officer to deal with the offences under the Act, and therefore to investigate into the offences, be not held exclusive, there can be then two investigations carried on by two different agencies, one by the special police officer and the other by the ordinary police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to coordinate the activities of the regular police with respect to cognizable offences under the Act and those of the special police officer.

23. The special police officer is a police officer and is always of the rank higher than a Sub-Inspector and therefore, in view of Section 551 of the Code, can exercise the same powers throughout the local area to which he is appointed as may be exercised by the officer in charge of a police station within the limits of his station.

24. We are therefore of opinion that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognizable offences. The result is that this appeal by the Delhi Administration fails and is hereby dismissed.”

5. Learned counsel for the petitioner further relies upon the judgment of the Hon'ble Supreme Court rendered in **Union of India vs. Ashok Kumar Sharma and others 2021 CriLJ 2006** to contend that the police officer has no power to register FIR, investigate and arrest a person. The Hon'ble Supreme Court has categorically held that under a special statute like Drugs and Cosmetics Act, 1940, as per the provisions of Section 32 of the said Act read with the scheme of the Cr.P.C., a police officer cannot prosecute an offender in regard to such offence even if they are cognizable offences and the persons authorized under Section 32 of the Act are entitled to do the same. As such, the very registration of the FIR (supra) is bad in the eyes of law, as cognizance of an offence under the PNDT Act can only be taken upon a criminal complaint.

6. Per contra, learned State counsel submits that the petitioner has approached this Court at the stage when the investigation was pending. As such, on this ground alone, the present petition is not maintainable being premature, in view of the law laid down by the Hon'ble Supreme Court in ***Satwinder Kaur Vs. NCT Delhi (1999) 8 SCC 728***. As such, pending investigation, power under Section 482 Cr.P.C. cannot be exercised to quash the FIR before filing a final report under Section 173 Cr.P.C. Now the investigation is complete and a report under Section 173 Cr.P.C. along with

complaint by the Appropriate Authority as envisaged under Section 28 of the PNDT Act will be filed in the concerned jurisdictional Court and therefore, cognizance would be taken only on the said complaint.

OBSERVATION AND ANALYSIS

7. Having heard learned counsel for the parties and after perusal of the record of the case as well as the case laws cited, the following issue arises for consideration of this Court.

Whether police has the power to register FIR and investigate an offence under the PNDT Act?

8. Before adverting to the aforesaid question and to appreciate the rival contentions of the parties, it would be apt to reproduce relevant provisions of Cr.P.C and the PNDT Act.

Cr.P.C.

“2. Definitions. – In this Code, unless the context otherwise requires, -

(a) “bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence;

(b) “charge” includes any head of charge when the charge contains more heads than one;

(c) “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(d) complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

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PNDT Act

“27. Offence to be cognizable, non-bailable and non-compoundable.

— Every offence under this Act shall be cognizable, non-bailable and non-compoundable.”

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.

Rule 18-A (3) of the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as Rules of 1996)

(3) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter alia, shall observe the following conduct for processing of complaint and investigation, namely:-

(i) maintain appropriate diaries in support of registration of each of the complaint or case under the Act;

(ii) attend to all complaints and maintain transparency in the follow up action of the complaints;

(iii) investigate all the complaints within twenty four hours of receipt of the complaint and complete the investigation within forty eight hours of receipt of such complaint;

(iv) as far as possible, not involve police for investigating cases under the Act as the case under the Act are tried as complaint”

9. A perusal of the aforesaid provisions would indicate that the offences provided under the PNDT Act are cognizable, non-bailable and non-compoundable. Cognizable offences are those offences where the police have power to make an arrest without warrant and embark upon the investigation without the permission of the concerned Court. However, Rule 18-A of the Rules of 1996 indicates that the power of the police to investigate is not completely barred under the PNDT Act, as the expression ‘as far as possible’ under Rule 18-A (3) indicates that whenever the Appropriate Authority deems it necessary, it can take the aid and assistance of the police. The provisions of the PNDT Act read with Rule 18-A of the Rules of 1996 provide that assistance of the police for investigating a case under the PNDT Act can be taken in view of the exigency and peculiar circumstances of the case. However, for the Court to take cognizance, the bar under Section 28 of the PNDT Act would come into play. Therefore, when any information is received by the police about any cognizable offence, they are bound to register F.I.R and proceed with the investigation. But under the PNDT Act, there is a restriction that the Court shall take cognizance of an offence only on a complaint made by the concerned Appropriate Authority. The provisions of Rule 18-A of the Rules of 1996 would clearly distinguish the case of the petitioner from the facts in ***Union of India Vs. Ashok Kumar Sharma and others*** (supra). It does not support the arguments advanced by the learned counsel for the petitioner in any manner.

10. A Division Bench of this Court in ***Hardeep Singh and another Vs. State of Haryana and others*** in CRM No.M-4211 of 2014 decided on 04.12.2014, speaking through Justice S.S. Saron, has held as under:-

“In the present case, there is no proceeding pending in any Court at this stage. In fact in the reply that has been filed by the State, it is stated that the matter is still under investigation and therefore, the petition for quashing the FIR is not maintainable. Therefore, the stage for taking cognizance of the offence by the Court has not yet reached. The taking of cognizance of the offence by the Court is normally when the Court applies its mind to the facts of the case, which is primarily at the stage of framing charges.

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In the circumstances, the questions as formulated in the reference are answered in the following manner, that:-

(1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.

(2) A report under Section 173 Cr.PC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.”

CONCLUSION

11. The preference for a male child is evident from the skewed sex ratio, which is rooted in cultural and social biases that not only propagate misogyny but also endangers the health of the expectant mothers. Alongwith posing deep ethical questions, selective termination of pregnancies further exacerbates gender inequality in the society creating an unsafe environment, unconducive to the cause of gender justice. Forced, illicit abortions in unhygienic clinics directly attacks their right to bodily autonomy *inter alia* violating right enshrined under Article 21 of the Constitution of India. Separating context

from the statute would have disastrous consequences and therefore, it is imperative that the Courts do not fall prey to hyper-technical approaches while interpreting the PNDT Act and pay due regard to the legislative intent behind it. The PNDT Act serves a social utility and a restrictive interpretation of the same would negate the very purpose of its enactment.

12. Speaking through Justice Arun Mishra, a two Judge bench of the Hon'ble Supreme Court in ***Federation of Obstetrics and Gynecological Societies of India v. Union of India and others (2019) 6 SCC 283***, while upholding the constitutional validity of the provisions of the PNDT Act, has made the following observations:

“72. The mischief sought to be remedied is grave and the effort is being made to meet the challenge to prevent the birth of the girl child. Whether Society should give preference to male child is a matter of grave concern. The same is violative of Article 39A and ignores the mandate of Article 51A(e) which casts a duty on citizens to renounce practices derogatory to the dignity of women. When sex selection is prohibited by virtue of provisions of Section 6, the other interwoven provisions in the Acts to prevent the mischief obviously their constitutionality is to be upheld.

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75. Reliance has also been placed on the decision of this Court in Dr. Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454, in which this Court observed...

“53. It is well settled that a statute is to be read in the context of the background and its object. Instead of literal interpretation, the court may, in the present context, prefer purposive interpretation to achieve the object of law. Doctrine of proportionality is well known for advancing the object of Articles 14 and 21. A procedural penal provision affecting liberty of citizen must be read consistent with the concept of fairness and reasonableness.”

13. The intervention of this Court is sought at a time when the investigation was in progress. The stage for taking cognizance of offence under the PNDT Act has not yet been reached and thus, the present FIR cannot be quashed on the ground that the police cannot register and investigate an offence under the PNDT Act. The only restriction imposed upon the Court is that it cannot take cognizance except on the complaint filed in writing by the Appropriate Authority.
14. No other argument is made out. Therefore, in view of the observations made herein above, this Court does not find any ground for quashing of the FIR or the subsequent proceedings arising therefrom. Resultantly, the instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

December 11, 2023

Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No