

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

(1) CRM-M-25474-2015 (O&M)
Reserved on 28.02.2023
Pronounced on: 17.03.2023

Dr. Anant Ram BarwalaPetitioner

Versus

State of HaryanaRespondent

(2) CRM-M-38434-2019 (O&M)

Dr. Anant RamPetitioner

Versus

District Appropriate Authority (PC&PNDT), HisarRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Abhishek Sethi, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

MANJARI NEHRU KAUL, J.

This judgment shall dispose of the following 02 petitions:-

(i) CRM-M-25474-2015, wherein the petitioner is seeking quashing of FIR No.699 dated 28.06.2015 under Sections 3, 3A, 5, 6 and 23 of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred to as, 'the PCPNDT Act'), Sections 315, 420, 417/120-B of the Indian Penal Code, 1860 (for short, 'the IPC') and Section 5(iv) of the Medical Termination of Pregnancy Act, 1971 (for short, 'the MTP Act') registered at Police Station City Hisar, District Hisar;

(ii) CRM-M-38434-2019 wherein the petitioner is praying for

quashing of Criminal Complaint titled as 'State of Haryana vs. Satish & others' bearing No.COMA/60/2018 dated 12.11.2018 under Sections 3, 3A, 5, 6, 23, 25 and 28 of the PCPNDT Act along with all consequential proceedings arising therefrom.

Since the petitioner is an accused in the FIR as well as the complaint in question, and questions of law which arise in both the above petitions are common, they, thus with the consent of learned counsel are being taken up together.

The FIR in question was registered at the instance of Dr. Sanjay Dahiya, Nodal Officer (PNDT) Act-cum-Deputy Civil Surgeon, Hisar, wherein it was alleged that on 28.06.2015, SI Randhir Singh informed the Civil Surgeon, Hisar that a person by the name of Jaibir, along with another person Parveen, was carrying out illegal sex determination test at Sunder Nagar, Hisar. Hence, one Seema Devi, who was 3-4 months pregnant, was persuaded to be a decoy customer. The decoy customer was called by accused Jaibir at Sunder Nagar, Hisar for carrying out sex determination test. Upon receipt of the said information, a four-member team comprising of (i) Dr. Sanjay Dahiya, Nodal Officer (PNDT) Act-cum-Deputy Civil Surgeon, Hisar (ii) Dr. Amarjeet Bhukal, SMO, Arya Nagar (Lady Medical Officer) (iii) Dr. Sajjan Medical Officer, UHC Azad Nagar, Hisar and (iv) Sh. Raman Kumar Sheoran, Drug Control Officer, Hisar-I, was constituted along with a police party. The decoy customer Seema Devi, along with one Mewa Devi, went to accused Jaibir along with a sum of Rs.16,000/-. The said money was received by accused Jaibir from Seema Devi.

Thereafter, Seema Devi was taken inside the house by accused Parveen

for carrying out sex determination test of her foetus. On being signaled, the team which was waiting outside, raided the spot. Accused Parveen fled away by scaling the wall along with a portable Ultrasound machine, which was being used for sex determination of foetuses. Two persons i.e. accused Jaibir and accused Dharmender were, however, apprehended at the spot, who admitted that they were working as agents of accused Parveen. Currency notes of Rs.16,000/- which were given by Seema Devi, were recovered from accused Jaibir. After the raid, SI Dogar Singh, in-charge Padav Chowki along with other police personnel, reached the spot, arrested two persons who were at the spot and took into possession the articles which were found inside the room and which were being used for the purpose of carrying out illegal sex determination tests.

Pursuant to registration of the FIR in question, investigation was carried out. During investigation, accused Satish, Surender, Prem Rani, Rajesh Kumar and the present petitioner Dr.Anant Ram, were found involved in the commission of the offences alleged. During investigation, accused Jaibir suffered a disclosure statement to the effect that he was working in Astha Hospital, Sirsa along with accused Satish, who used to send customers i.e. pregnant women for sex determination of their foetuses. Accused Jaibir also admitted that on 28.06.2015, he took the decoy customer Seema Devi to House No.176/1779 Sunder Nagar, Hisar for sex determination by Parveen and recovered Rs.16,000/- from Seema Devi. In his disclosure statement he further stated that he and accused Dharmender were on close terms for the last many years and the latter had been referring

cases to him for carrying out the sex determination tests on the foetus of pregnant women, and had referred approximately 30 such cases to accused Dharmender at AMC Hospital, Hisar from Sirsa and surrounding areas for the said purpose, for which an amount of Rs.12,000/- to Rs.15,000/- per case had been charged. Still further, at AMC Hospital, Hisar about 4-5 cases had been sent to him by accused Satish and another 4-5 cases by one Kuldeep. On being arrested, accused Dharmender also corroborated that accused Parveen had been carrying out sex determination tests. Accused Dharmender suffered a number of disclosure statements and in one such statement, he stated that on 10.06.2015 accused Parveen had brought a 3-4 months pregnant lady to him for abortion. He had then telephonically contacted accused petitioner Dr. Anant Ram and demanded Rs.13,000/-. Thereafter, he had directed accused Parveen to take the pregnant lady, Deepika, to AMC Hospital, as no CCTV cameras were installed there. He then went and purchased a MTP kit which was then administered orally to patient Deepika. Thereafter, Deepika was taken to the operation theatre of AMC Hospital where her abortion was carried out. While the entire procedure was underway, petitioner Dr. Anant Ram came to the AMC Hospital, Hisar, as he would often come to visit such patients upon whom illegal abortions were carried out to take care of any complications which may arise during such procedures, else he would keep a safe distance. During investigation, other accused were also arrested and suffered their respective disclosure statements.

Thereafter, on the basis of the allegations contained in the

FIR, as well as the investigation carried out in the FIR, a complaint was

lodged by Dr. Dayanand, Chairperson, District Appropriate Authority, Haryana, Civil Surgeon, Hisar against the petitioner under the PCPNDT Act.

Learned counsel for the petitioner, while praying for quashing of the FIR and the complaint in question, *inter alia* argued:-

(1) that neither was the petitioner arrested at the spot nor named in the FIR in question. Merely on the basis of vague allegations levelled against the employees of the petitioner, it could not be a sufficient enough ground to link the petitioner with the crime in question. Therefore, *prima facie* no offence was made out against the petitioner.

(2) that the FIR lodged against the petitioner was bad in law. Under Section 17(4)(e) of the PCPNDT Act, except the power to arrest, the power to investigate in respect of the breach of provisions of the PCPNDT Act, had been bestowed upon, only on the Appropriate Authority. Still further, Rule 18A(3)(iv) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as, 'the PCPNDT Rules') provided that as far as possible, the Appropriate Authority should refrain from involving the police while investigating an offence under the PCPNDT Act. Therefore, in the light of the provisions of Section 17(4)(e) of the PCPNDT Act and Rule 18A(3)(iv) of the PCPNDT Rules read with Section 4(2) of the Cr.P.C., police did not even have the power to register an FIR much less investigate any offence under the PCPNDT Act.

(3) that though the offences alleged in the case in hand were

cognizable, however, it had been held by the Hon'ble Supreme Court in **'Delhi Administration vs. Ram Singh' 1962 AIR (SC) 63** that only the special officer, who had been empowered to investigate the offences, was competent to investigate into the same. Therefore, the power to investigate under the Special Act i.e. PCPNDT Act would lie with the person/authority empowered under the PCPNDT Act i.e. the Appropriate Authority and not the police.

(4) that as per Section 28 of the PCPNDT Act, cognizance could only be taken on a complaint made by the Appropriate Authority or in the alternative by a person who had given notice of not less than 15 days to the Appropriate Authority. Still further, under Section 2(d) of the Cr.P.C., police report had been excluded from the definition of 'complaint'. Hence, neither the police could investigate the offences under the PCPNDT Act nor the Court could take cognizance on a police report.

(5) that even the FIR has not been lodged by the Appropriate Authority, but by Dr. Sanjay Dahiya, Nodal Officer (PNDT) Act-cum-Deputy Civil Surgeon, Hisar. The Appropriate Authority to lodge the FIR would have been the District Appropriate Authority comprising of all the 03 members.

(6) that the complaint in question had not been validly instituted as it has not been signed by all the 03 members of the Appropriate Authority but only by Dr. Dayanand (Chairperson, District Appropriate Authority, Haryana, Civil Surgeon, Hisar). In support, reliance has been placed upon **'Dr. Ritu Prabhakar vs. State of**

Haryana' CRM-M-21764-2015 d/d 03.06.2016 and 'Ishwar Singh

Yadav vs. State of Haryana' CWP-11171-2015 d/d 02.11.2017.

(7) that since there was no provision under the PCPNDT Act for delegation of power by the authority to its Chairperson, therefore, the complaint in question could not have been instituted at the instance of the Civil Surgeon concerned, without the signatures of the other members of the District Appropriate Authority.

Per contra, learned State counsel while vehemently controverting the submissions made by the counsel opposite, contended that the PCPNDT Act did not bar the registration of an FIR and moreover, since the offences under the PCPNDT Act were cognizable in nature, the police was duty bound to register an FIR under Section 154 of the Cr.P.C., as and when any information was received by it with respect to the commission of a cognizable offence. He further submitted that the FIR in question was registered at the instance of Dr.Sanjay Dahiya, Nodal Officer (PNDT) Act-cum-Deputy Civil Surgeon, Hisar who along with other members of the raiding team had been duly authorised by the District Appropriate Authority (in short, 'DAA') to proceed and take action against the accused persons. Therefore, the registration of FIR could not be challenged on the ground that it was not registered at the instance of DAA. Learned State counsel vehemently argued that since offences under the MTP Act had also been committed, therefore, the FIR in question could not be quashed. While placing reliance upon **Hardeep Singh and another Vs. State of Haryana and others, CRM-M-4211-2014**, learned State counsel submitted that it was well settled that there was no bar on the

Act, though the police could not have filed a report under Section 173 of the Cr.P.C. Still further, he contended that in view of the law laid down in **Hardeep Singh's case (supra)**, the police would be filing a *Kalandra* before the DAA which in turn would be filed by it in the complaint instituted under the PCPNDT Act.

Learned State counsel invited the attention of this Court to Section 28(1)(a) of the PCPNDT Act and vehemently submitted that the DAA was competent to authorise any officer to file a complaint under the PCPNDT Act and there could not be any bar on the Court to take cognizance upon a complaint instituted by such officer. Learned State counsel also argued that Dr. Dayanand, Chairperson, District Appropriate Authority, Haryana, Civil Surgeon, Hisar was duly authorised by the DAA by way of a duly signed resolution by all the members including the Chairperson, to institute a complaint under the PCPNDT Act. In support, learned State counsel placed on record a copy of the said resolution.

Learned State counsel further argued that Dr. Dayanand had been authorised by the DAA as per the provisions of Section 28(1)(a) of the PCPNDT Act, to institute a complaint and it was not that the DAA had delegated its powers to a third person. Learned State counsel while concluding his arguments submitted that during investigation it had come to light that the petitioner had been carrying out illegal sex determination tests of foetuses and also conducting illegal medical termination of pregnancy, hence, the technicalities of procedural laws could not be allowed to come in the way of punishing those guilty of committing such heinous offences.

I have heard learned counsel and perused the relevant material on record.

The following questions arise for consideration of this Court:-

- (1) Whether the police can register an FIR qua the commission of offences under the PCPNDT Act and thereafter carry out investigation qua the same?
- (2) Whether the Court can take cognizance of offences under the PCPNDT Act on a complaint filed by an officer authorised by the Appropriate Authority?

A Division Bench of this Court in **Hardeep Singh's case (supra)** while dealing with a reference pertaining to the cases under the PCPNDT Act framed the following law points for consideration:-

- “(1) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?”*
- “(2) Whether the report under Section 173 CrPC along with the complaint of an Appropriate Authority can be filed to the Court?”*
- “(3) Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?”*

The Hon'ble Division bench in respect of the aforementioned law points answered as under:-

“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 CrPC 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.”

On a meticulous perusal of the above, there can be no manner of doubt that there is no bar on the police to register an FIR for commission of offences under the PCPNDT Act, and thereafter to investigate into the same. However, cognizance of offences under the PCPNDT Act can only be taken by a Court on the basis of a complaint under Section 28(1)(a) of the PCPNDT Act and not on the basis of a police report under Section 173 of the Cr.P.C. Thus, in the present case, the police cannot be faulted with for registering the FIR in question for offences under the PCPNDT Act.

This Court also does not find any merit in the submissions made by learned counsel for the petitioner that the FIR could have been registered only at the instance of the DAA comprising of all the 03 members.

The FIR in question was registered at the instance of Dr. Sanjay Dahiya, Nodal Officer (PNDT) Act-cum-Deputy Civil Surgeon, Hisar, who was duly authorised by the other members of the DAA, to take action against the accused persons. Still further, learned counsel for the petitioner failed to bring to the notice of this Court any statutory provisions or rules which provided that an FIR for commission of offences under the PCPNDT Act could be registered only at the

instance of the DAA. The FIR in question was registered for commission of offences under the PCPNDT Act and for offences under the Indian Penal Code, 1860 also. No doubt, a Court cannot take cognizance of offences under the PCPNDT Act on the basis of a police report, however, at the same time, there would be no bar to the Court taking cognizance of offences under the IPC on the basis of a police report. Hence, the trial qua offences under the PCPNDT Act would continue on the basis of a complaint filed under Section 28 of the PCPNDT Act whereas qua the offences under the IPC, it would continue on the basis of a police report.

Coming to the contention raised by the learned counsel for the petitioner that the complaint was not instituted validly as it did not bear the signatures of all the members of DAA, and the DAA had no powers to delegate its authority to the Chairperson of the DAA to institute a complaint, this Court does not find any force in these submissions as well.

It would be apposite to reproduce Section 28(1)(a) of the PCPNDT Act, which reads as under:-

“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;”

It is clear from a reading of the above provisions that Appropriate Authority has been empowered to authorise any officer to

file a complaint under the PCPNDT Act.

It would also be further relevant to reproduce the relevant extract of the complaint in question:-

“1. That the meeting of District Appropriate Authority, Hisar under the chairmanship of Dr. Dayanand (Chairman District Appropriate Authority, Haryana, Civil Surgeon, Hisar) was held on 02-11-2018 at Civil Hospital, Hisar, wherein the meeting it was decided that the criminal complaint against the above-mentioned accused persons is to be filed in the court of Ld. Illaqa Magistrate, Hisar. The copy of the meeting proceedings and order dated 02-11-2018 is attached herewith as Annexure C-1 (2 pages)

Moreover, the complainant has been authorised by the District Appropriate Authority, Hisar under the provision of Section 28 (1)(a) of the Pre-Conceptual and Pre-Natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 and amendment 2002 hereinafter referred to as PC & PNDT Act, (in short) vide notification No.I/18/88-2-HH-II-97 duly issued by Govt. of Haryana in all districts of Haryana. The copy of the notification is attached herewith as Annexure C-2. (1 page)”

A perusal of the above extract of the complaint reveals that it does find mention therein that Dr. Dayanand, Chairperson, District Appropriate Authority, Haryana, Civil Surgeon, Hisar had been duly authorised to institute the complaint in question by way of a resolution signed by all the members. Therefore, this Court has no hesitation in holding that the complaint was instituted in accordance with the provisions of the PCPNDT Act.

Learned counsel appearing for the petitioner placed reliance upon **Dr. Ritu Prabhakar's case (supra)**, however, it would not further his cause as in that case there was no resolution vide which the Chairperson had been authorised by the Appropriate Authority to institute a complaint under the PCPNDT Act.

The reliance placed by the learned counsel for the petitioner upon judgment of Hon'ble the Supreme Court in **Delhi Administration Vs. Ram Singh's case (supra)** would also not come to his rescue as Section 45 (1A) of the PMLA Act specifically provides that no police officer shall investigate into offences under the PCPNDT Act, and for offences under Suppression of Immoral Traffic Act only a certain category of police officers as Special Probationary Officers are empowered to conduct investigation. It would be pertinent to notice here that in the PCPNDT Act on the other hand, there is nothing which completely bars involvement/investigation by the police. In this regard, it would be relevant to reproduce Rule 18A(3) of the PCPNDT Rules which reads as under:-

“18A.Code of Conduct to be observed by Appropriate Authorities

(1) XXX XXX XXX

(2) XXX XXX XXX

(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 cases under the Code of Criminal Procedure, 1973 (2 of 1974).”***

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From a bare perusal of the above reproduced Rule, particularly the expression “as far as possible”, which appears in sub-clause (iv), it is abundantly clear that there is no absolute bar qua the involvement of police in the investigation of offences under the PCPNDT Act. The legislature provided for investigation of offences under the PCPNDT Act by the Appropriate Authority because the police would not have specialized medical knowledge and expertise of the equipment and process used by offenders while committing crimes of this nature. Members of the Appropriate Authority, on the other hand, in some cases may also not be fully aware of the technicalities and nitty gritty of procedural laws. Hence, the legislature in its wisdom, deemed it appropriate to not completely exclude the involvement of the police.

A perusal of the contents of the FIR prima facie reveals the commission of cognizable offences under the PCPNDT Act. This Court thus, at this stage cannot delve into the truthfulness or otherwise of the allegations which stand levelled against the accused in the FIR in question. It being a matter of trial would be duly appreciated by the Trial Court, after the parties lead their respective evidence.

Even otherwise, as submitted by the learned counsel for the State and already noticed earlier, that since the investigation is complete in the FIR in question, the police would be filing a *Kalandra* before the DAA shortly in respect of the offences under the PCPNDT Act and thereafter the DAA would file the same in the ongoing complaint case under the PCPNDT Act. This Court would, therefore,

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not be inclined to invoke its inherent jurisdiction under Section 482 of the Cr.P.C. and quash the FIR and complaint in question.

Accordingly, the instant petitions are dismissed.

17.03.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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