

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30489-2016
Reserved on: 21.09.2023
Pronounced on: 28.09.2023

Sohan Singh and others

.....Petitioners

Vs.

The State of Punjab

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Sanjeev Pathak, Advocate for the petitioners.

Mr. R.S. Khaira, DAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioners have prayed for quashing FIR No.68 dated 02.03.2016 registered under Section 3(3), 3A, 5(2), 6(b) & 23(3) of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act C.D.C., 1994 [in short PC&PNDT, Act) and Section 120-B IPC, 1860 at Police Station City Khanna, Police District Khanna, District Ludhiana and all the subsequent proceedings arising therefrom.

2. As per allegations, petitioners and others were found to have conducted sex determination test on a decoy pregnant woman on 01.03.2016 and to have conveyed the sex of the fetus to the woman. On the complaint of Sub Divisional Appropriate Authority -cum- Senior Medical Officer, in charge, Civil Hospital, Khanna, present FIR was registered.

3. Contention of learned counsel for the petitioners is that as per Section 28 of the PC&PNDT Act, there is a specific bar to lodge the FIR and

so taking of the cognizance of the offence by the Police is barred, as only a

complaint can be filed by appropriate authority. Learned counsel has referred to *Union of India Vs. Ashok Kumar Sharma and others, 2020(3) R.C.R. (Criminal) 726*, wherein, in a case pertaining to Drugs and Cosmetics Act, 1940, it was held by Hon'ble Supreme Court that Police Officer has no power to register the FIR, investigate or arrest any person, as that power lies only with the drug inspector.

4. Submissions of both sides considered. Paper book perused.

5. Section 28 of the PC&PNDT Act 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; 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.”

6. A bare perusal of the afore-said provision would reveal that bar to take cognizance is for the Court, unless the complaint is made by the concerned appropriate authority or by a person after following procedure prescribed under clause (b) of Section 28 (1).

7. Section 27 of the Act clearly provides that every offence under this Act shall be cognizable, besides being non-bailable and non-

compoundable.

8. In ***Hardeep Singh v. State of Haryana: Law Finder Doc Id # 1945782 bearing No. CRM-M-4211 of 2014*** decided on 04.12.2014, a Division Bench of this High Court, considered following legal points on a reference made by the single bench: -

“(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?”

9. After consideration, the division bench answered the above said law points 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 on 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.”

10. It is, thus, clear that though for the offence committed under the PC&PNDT Act, an FIR can be registered on the complaint of appropriate authority and the same can be investigated by the Police, but the cognizance of the same can be taken by the Court only on the complaint to be made by

the appropriate authority/ one of the person mentioned in Section 28 of the Act. It has also been made clear by Hon'ble Division Bench of this Court that the report under Section 173 Cr.P.C can be made part of the complaint of appropriate authority to be filed in the Court and that the cognizance would be taken only when the complaint is filed in accordance with Section 28 of the Act.

11. Learned State Counsel, on the basis of status report filed before this Court, has conceded the legal position to the effect that on the basis of an FIR lodged with the Police, the Court cannot take cognizance of the offence for offences under the provisions of PC&PNDT Act, though the FIR can be lodged and the investigation report can be made the part of the complaint to be filed by the appropriate authority; and that the Court can take cognizance on the basis of that complaint to be filed by the appropriate Court.

12. It is important to notice that Section 17 of the PC&PNDT Act provides for the functions, which are required to be performed by Appropriate Authority. Relevant part of the Section read as under:

“17. Appropriate Authority and Advisory Committee. -

4. The Appropriate Authority shall have the following functions, namely: —

(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;

(b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;

(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;

(d) to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;

(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;

(f) to create public awareness against the practice of sex selection or pre-natal determination of sex;

(g) to supervise the implementation of the provisions of the Act and rules;

(h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.”

13. Apart from above, Rule 18A of the PC&PNDT Rules, 1996 provide for a code of conduct to be followed by the appropriate authorities. Rule 18A (3) providing for code of conduct to be observed by the appropriate authorities for processing of complaints and investigation, is relevant here, which read as under:

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

(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 cases under the Act are tried as complaint cases under the Code of Criminal Procedure, 1973*

(2 of 1974).”

14. As noticed earlier, as per Section 27 of PC&PNDT Act, the offences are classified as ‘cognizable’. There is no exclusion clause to bar the role of police. Though the appropriate authorities have the power to investigate the complaints and also to take appropriate legal action against the use of any sex selection technique by any person at any place and also to initiate independent investigations but use of the phrase ‘*as far as possible*’ included in Rule 18-A (3) of PC&PNDT Rules clearly indicate the legislative intention that the role or assistance of police is not barred under the Act. Section 28 of PC&PNDT Act only bars taking of cognizance by the Court and does not bar registration of FIR or investigation by police based on a complaint lodged with the police.

15. In the present case, after lodging of the FIR dated 02.03.2016 Annexure P1, the concerned appropriate authority has already filed the complaint before learned Sub Divisional Judicial Magistrate, Khanna, copy of which is Annexure P2.

16. As far as ***Union of India Vs. Ashok Kumar Sharma and others (supra)*** relied by Ld. Counsel for the petitioners is concerned, that authority was rendered by Hon'ble Supreme Court in a case pertaining to Drugs and Cosmetics Act, 1940 while interpreting Section 32 of the said Act.

17. Section 32 of the Drugs and Cosmetics Act reads as under:

“32. Cognizance of offence. —

(1) No prosecution under this Chapter shall be instituted except by

(a) an Inspector, or

(b) any gazetted Officer of the Central Government or a State Government authorized in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Sessions shall try an offence punishable under this Chapter.]

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.”

18. Noticing the inter-play between the provisions of the Code of Criminal Procedure; and Drugs and Cosmetics Act, 1940, Hon'ble Supreme Court culled out the following conclusions/ directions as follows: -

“150. Thus, we may cull out our conclusions/directions as follows:

*I. In regard to cognizable offences under Chapter IV of the Act, in view of [Section 32](#) of the Act and also the scheme of the [CrPC](#), **the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in [Section 32](#) are entitled to do the same.***

II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under [Section 32\(3\)](#) of the Act, i.e., if he has committed any cognizable offence under any other law.

III. Having regard to the scheme of the [CrPC](#) and also the mandate of [Section 32](#) of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under [Section 154](#) of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the [CrPC](#).

*IV. Having regard to the provisions of [Section 22\(1\)\(d\)](#) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in *D.K. Basu (supra)* and to follow the provisions of [CrPC](#).*

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under [Article 142](#) of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in [Section 58](#) of the CrPC, but also immediately report the arrests to their superior Officers.”

19. What is important to notice is that Section 32 of the Drugs and Cosmetics Act is not pari materia with Section 28 of the PC&PNDT Act. Though heading of both of the provisions read as ‘*cognizance of offences*’, but as per Section 32 of the Drugs and Cosmetics Act, it is provided that ‘*no prosecution under the Chapter can be instituted*’ except by an Inspector or gazetted officer etc. On the other hand, under Section 28 of the PC&PNDT Act, ‘*the Court has been debarred from taking cognizance of an offence*’ except on the complaint to be made by the concerned appropriate authority.

20. In view of the afore-said discussion and by relying upon ***Harjinder Singh's case (supra)***, it is held that FIR in question Annexure P1 is not liable to be quashed. However, it is made clear that Court cannot take

cognizance of the offence on the basis of the report under Section 173 Cr.P.C, if submitted by the Police after investigating the matter, though that report can be made part of the complaint by the appropriate authority and then the cognizance can be taken by the concerned Court in accordance with Section 28 of the Act.

Disposed of accordingly.

September 28, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No