

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

CRM-M No.37161 of 2016 (O&M)

Reserved on: 28.02.2023

Pronounced on: 17.03.2023

Dr. Anant Ram Barwala

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Abhishek Sethi, Advocate for the petitioner.

Mr. Chetan Sharma, Assistant Advocate General, Haryana
for the respondent/State.

MANJARI NEHRU KAUL, J.

The instant petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.99 dated 05.05.2016 under Sections 3A, 4(3), 5, 6 of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred to as, 'the PCPNDT Act') and Rule 9(4) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as, 'the PCPNDT Rules') registered at Police Station Barwala, District Hisar.

The FIR in question was registered against the petitioner at the instance of Deputy Civil Surgeon-cum-Nodal Officer, PC PNDT Act, Hisar. As per the allegations levelled in the FIR in question, on 04.05.2016, on a request received from Civil Surgeon, Sirsa, the District Appropriate Authority-cum-Civil Surgeon, Hisar constituted a team for carrying out a

joint raid along with a team from Sirsa under the PCPNDT Act comprising of (i) Dr. Tej Pal Sharma, Deputy Civil Surgeon-cum-Nodal Officer, PC PNDT, Hisar (ii) Dr. Nidhi LMO (Nagrik Hospital, Hisar) and (iii) Mr. Krishan Kumar Garg, Drug Control Officer, Hisar. The team was joined by Dr. Viresh Bhushan, Deputy Civil Surgeon (NHM), Sirsa; Dr. Raj Kumar, SMO, Madho Singhana and Dr. Rajesh Chaudhary, Dy. Civil Surgeon, Sirsa. A sum of ₹20,000/- (40 currency notes of ₹500/- denomination each) were handed over to one Bhagirath through Dr. Viresh Bhushan, who was to introduce himself as an assistant of the decoy patient namely Suman. Both Dr. Viresh Bhushan as well as the decoy patient Suman then sat together in a car, driven by Surender Kumar, Driver RTS-102 Sirsa and started towards Hisar. Said driver, Surender remained in constant touch with tout Sarooj of Hisar. The raiding team followed the car of Surender. On reaching Bala Ji Hospital, Azad Nagar, Hisar, where the alleged tout Sarooj joined other occupants of the car being driven by Surender. On reaching Dr. Anant Ram Janta Hospital Private Limited, CHC Road, Barwala, all the four occupants got out from the car, and Bhagirath and Sarooj along with the decoy entered the hospital. After 15-20 minutes, the decoy patient along with Bhagirath and Sarooj came out of the hospital which was a signal for the team to raid the premises. The team apprehended Sarooj at the spot. The team then entered the premises of the petitioner's hospital where Ultrasound had been conducted by him on the decoy patient, without filling form F or making any entry in the said regard in the OPD register or any other document. Recovery of currency notes, which had been handed over to Bhagirath by Dr. Viresh

Bhushan and which had in turn been given to Sarooj by Bhagirath for carrying out the illegal sex determination test, was effected from the house of Sarooj at Azad Nagar, Hisar. Two X-Ray films handed over to the decoy patient by the petitioner, were also recovered. The Ultrasound machine, which was used to carry out the illegal sex determination tests, was sealed at the hospital itself. It was alleged in the FIR that the petitioner had contravened the provisions of the PCPNDT Act by conducting Ultrasound examination on a pregnant lady, without complying with the requisite formalities as mandated under the PCPNDT Act.

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

(1) that the petitioner neither agreed to carry out the sex determination on the foetus of the decoy patient nor accepted any money qua the same. No recovery of any tainted money was effected from him. The petitioner simply did an X-Ray on the decoy patient and thereafter handed her over the X-Ray films.

(2) that no prima facie offence was made out against the petitioner in the FIR in question as conducting an X-ray on a patient was not an offence under the PCPNDT Act. The X-ray technique was not a pre-natal diagnostic technique and the sex of the foetus could not be determined through the same. Therefore, the FIR in question as well as subsequent proceedings arising therefrom were liable to be quashed.

(3) 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 breach of provisions of the PCPNDT Act, had been bestowed upon, only on the Appropriate Authority. Still further, Rule 18A(3)(iv) of 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 offences under the PCPNDT Act.

(4) that though the offences alleged in the case in hand were cognizable in nature, 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.

(5) 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 by 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.

(6) that even the FIR had not been lodged by the Appropriate Authority but by Deputy Civil Surgeon-cum-Nodal Officer PCPNDT Act, Hisar. FIR could have been lodged only by the District Appropriate Authority, comprising of all the 03 members.

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 an 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 Deputy Civil Surgeon-cum-Nodal Officer PCPNDT Act, 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. 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 registration of the FIR qua the offences under the PCPNDT 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 while concluding his arguments submitted that during investigation it had come to light that the petitioner was carrying out illegal sex determination tests of fetuses, 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 question arises 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?

A Division Bench of this Court in **Hardeep Singh's case (supra)** while dealing with this aspect framed the following law points:-

“(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 **Hardeep Singh's case (supra)** thereafter held 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 minute 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 Appropriate Authority comprising of all the 03 members.

The FIR in question was registered at the instance of Deputy Civil Surgeon-cum-Nodal Officer, PC PNDT Act, Hisar, who was duly authorised to take action against the accused persons by way of a resolution

of the DAA. 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. Coming to the provisions of Section 28 of the PCPNDT Act, it only provides for the procedure to be followed while filing a complaint before the Court and it cannot certainly be construed to mean that an FIR cannot be registered. The FIR in question was registered for commission of offences under the PCPNDT Act and for offences under the Indian Penal Code, 1860 (for short, 'the IPC') 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 cannot be a bar on the Court to take cognizance of offences under the IPC, on the basis of a police report. Hence, the trial qua offences under the PCPNDT Act can continue on the basis of a complaint filed under Section 28 of the PCPNDT Act and qua commission of offences under the MTP Act and under the IPC, it can continue on the basis of a police report.

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).***”

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. This Court would, therefore, not be inclined to invoke its inherent jurisdiction under Section 482 of the Cr.P.C. and quash the FIR in question.

Accordingly, the instant petition is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

March 17, 2023
rps/vinay

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