

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

Reserved on 17th of July, 2023

Pronounced on 13th September, 2023

CRM-M-24487-2021

Satbir

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Kamal Deep Sehra, Advocate
for the petitioner.

Mr. Ashok K. Sehrawat, DAG, Haryana.

PANKAJ JAIN, J.

Petitioner has invoked jurisdiction of this Court under Section 482 Cr.P.C. seeking quashing of FIR No.371 dated 2nd of October, 2020 registered for the offences punishable under Sections 15(2), 15(3) of the Indian Medical Council Act, 1956 and Sections 3 and 4 of the Medical Termination of Pregnancy Act, 1971 (for short, 'the MTP Act), at Police Station Civil Line, Sonipat.

2. As per contents of the FIR, it has been alleged as under :

“I and Dr. Subhash Gahlawat, Dr. Arindam raided Gandhi Memorial Clinic, Sikka Colony, Sonipat under MTP. In this, Head Constable Sanjay 1176/Sonipat and HC Dharambir 390 were also taken together. We had received a secret information that person namely Satbir does illegal practice and abortion in Gandhi Memorial Clinic. After getting secret information, We prepared a decoy pregnant woman and sent that pregnant woman to Gandhi Memorial clinic, that woman approached Satbir after going to Gandhi Memorial Clinic and on talking, Satbir agreed to get

aborted that woman and demanded Rs.500/- and ask to bring Rs.500/-. Then today I gave Rs.500/- to decoy pregnant woman, in which there were two Notes of denomination of Rs.200/- and one note of denomination of Rs. 100/-. A separate list of these notes was prepared in which their serial number were noted. Upon these it was signed by pregnant woman Neelam and Civil Surgeon. I alongwith Dr. Arindam and Dr. Subhash were authorized by the Civil Surgeon for sending the Neelam with Rs.500/- to Gandhi Memorial Clinic and police help was taken in which HC Sanjay and HC Dharambir were associated. In Sikka Colony, Sonipat Gandhi Memorial Clinic, Satbir after taking Rs.500/- had given the MTP Kit for abortion. Neelam came out with the MP Kit and on receiving the signal the team reached Gandhi Memorial Clinic, where Satbir was found present on the spot. On enquiry on the spot, Satbir admitted that that he had taken Rs.500/- for giving the medicine for abortion. On enquiry he had returned Rs.500/-. The aforesaid Rs.500/- was matched with the earlier prepared list and those notes were found which were given to the pregnant woman. On the spot memo spot was prepared. A large number of medicines were found in the clinic. Another MT kit was also found, the details of which are given in the annexed spot memo and seizure memo which were prepared on the spot. The recovered notes were sealed in a white envelope. The MTP Kit which was provided to Neelam that was also sealed in a separate envelope. The remaining medicines and equipments were sealed in a Carton. Satbir was not qualified to conduct MTP and nor Gandhi Memorial Clinic is authorized to conduct the MTP. Therefore, a case should be filed against Satbir under section 3,4 of MTP Act 1971. Beside this, Satbir is not having any degree for Medical practice, so necessary legal action be taken under the provisions of Section 15(2) and 15 (3) of IMC Act.”

3. The question *'as to whether mere sale of MTP kit amounts to offence punishable under the provisions of MTP Act, 1971?'* came up before a Co-ordinate Bench of this Court in the case of **Dr. Vandana**

Malik vs. State of Haryana - CRM-M No.15860 of 2014 and the same has been answered vide order dated 18th of September, 2014 observing as under :

“Section 3 of the Act deals with 'when pregnancies may be terminated by registered medical practitioners'. Section 4 provides for place where pregnancy may be terminated. Subsections 2, 3 and 4 of Section 5 provide for punishment in certain eventualities. A relevant extract from Section 5 of the Act is quoted hereinbelow;-

5. Sections 3 and 4 when not to apply.-(1) XXX
XXX XXX XXX XXX
(2) notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall, be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified. (3) Who ever terminates any pregnancy in a place other than that mentioned in Section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years. (4) Any person being owner of a place which is not approved under clause (b) of Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.
Explanation 1. XXX XXX XXX
Explanation 2. XXX XXX XXX”

A perusal of the aforesaid penal provisions of Section 5 of the Act makes it evident that termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under Section 5(2) of the Act. A person who terminates any pregnancy in a place other than that mentioned in Section 4 of the Act, shall be punished in view of Section 5(3) of the Act. The legislative intent and object behind this act is to restrain termination of pregnancy by a person other than a registered medical practitioner or at a place other than the place provided for in Section 4 of the Act.

In the case at hand, the petitioner has been sought to be

indicted in the crime on the allegations that some instruments used for termination of pregnancy, were found in the labour room in Malik Hospital, Chand Garden, Samalkha, Panipat during a raid, conducted by a team of doctors. However, during investigation of the case, no evidence has been collected that Dr. Vandana Malik petitioner ever conducted termination of pregnancy. No person can be held guilty for committing a crime on the basis of assumptions and presumptions. This apart, there is nothing on record suggestive of the fact that these instruments are not used for conducting delivery or any other medical procedure, much less used only for termination of pregnancy.

Counsel for the State of Haryana otherwise failed to cite any provision in law or a precedent that if instruments which may be used for termination of pregnancy are found in a hospital, it raises a legal presumption against the doctor running that hospital or the owner of the place that the said hospital is being used for termination of pregnancy or any person has terminated the pregnancy. In this view of the matter, I find force in the contention of the petitioner that even if the allegations raised against the petitioner are accepted to be true on face value, the same do not constitute any offence charged against the petitioner, therefore, the proceedings are liable to be quashed. In this context, reference can be made to a judgment of Hon'ble the Supreme Court of India in *State of Haryana and others vs. Ch. Bhajan Lal and others, 1991 (1) R.C.R. (Criminal) 383*. In Ch. Bhajan Lal and others's case (supra), the Apex Court culled out certain categories of cases by way of illustrations wherein power under Article 226 or the inherent power under Section 482 of the Code can be exercised either to prevent abuse of process of any court or otherwise to secure ends of justice with the observations that it may not be possible to lay down any precise, clearly defined and sufficiently chennelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases where such power should be exercised. The categories of cases by way of illustrations have been described in clauses 1 to 7 of para 107. A relevant extract from clause (1) of the said para

reads thus:-

“Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.”

For the foregoing reasons, the petition is allowed, FIR no. 476 dated 16.09.2013, for offence under Section 3, 4, 5 of MTP Act, 1971 (hereinafter referred to as Act), registered at Police Station Samalkha, District Panipat, order dated 16.04.2014, charge sheet dated 16.04.2014 and proceedings emanating therefrom are ordered to be quashed.”

4. In view of the aforesaid settled proposition of law, this Court finds that sale of MTP Kit itself cannot be said to be an offence punishable under the MTP Act. Finding it to be a case which would fall within the parameters of law laid down by Apex Court in the case of *State of Haryana and others vs. Ch. Bhajan Lal and others, 1991 (1) R.C.R. (Criminal) 383*, this Court finds that the present FIR and the proceedings subsequent thereto cannot be allowed to continue.

5. In view of above, the present petition is allowed. FIR No.371 dated 2nd of October, 2020 registered for the offences punishable under Sections 15(2), 15(3) of the Indian Medical Council Act, 1956 and Sections 3 and 4 of the Medical Termination of Pregnancy Act, 1971, at Police Station Civil Line, Sonipat and all proceedings subsequent thereto are hereby quashed *qua* the petitioner.

September 13, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No