

(228)

2023:PHHC:068313

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42328 of 2017 (O&M)
Date of Decision: May 11, 2023

Suman ...Petitioner
Versus
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sumit Sangwan, Advocate for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C for quashing of FIR No.273 dated 05.09.2015 registered under Sections 420, 120B IPC and Section 3, 3A, 3B, 4, 5, 18, 23 of Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 at Police Station Dadri City, District Bhiwani (Now District Charkhi Dadri) (Annexure P.1) and all the subsequent proceedings including order of charge/charges dated 17.05.2016 (Annexure P.2).

2. A short reply by way of affidavit dated 10.05.2023 of Shri Desh Raj, Deputy Superintendent of Police, Badhra, District Charkhi Dadri has been filed on behalf of the respondent.

3. On 24.01.2023, the following order was passed:-

“For allegedly conducting illegal Sex Determination Test, contrary to the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short PC & PNDT Act), punishable under Section 23 of the Act; read with Section 420, 120B of the Indian Penal Code, FIR No.273 dated 05.09.2015

(Annexure P-1) was registered against the petitioner and others at Police Station Dadri City, District Bhiwani.

2. After concluding the investigation; the challan was filed before the Court. Learned Sub Divisional Judicial Magistrate, Charkhi Dadri on 17.05.2016 framed the charges against the petitioner and four others under Sections 420 & 120-B of Indian Penal Code and Section 23 of PC & PNDT Act (Annexure P-2).

3. Concededly, on the same allegations, District Appropriate Authority-cum- Civil Surgeon, Rewari filed complaint (Annexure P-3) against the same persons i.e. petitioner and four others before Learned Chief Judicial Magistrate, Rewari.

4. By way of this petition filed under Section 482 Cr.P.C., prayer is made by the petitioner to quash FIR No.273 dated 05.09.2015 and all the subsequent proceedings arising therefrom being misuse of process of law and hit by the principle of double jeopardy contained in Article 20 (2) of the Constitution of India as well as Section 300 Cr.P.C.

5. 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?

6. 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.

In view of the above said legal position, FIR (Annexure P-1) cannot be quashed only on the ground that a complaint on the same allegations was filed.

8. However, situation in present case has changed during pendency of this petition, inasmuch as proceedings in the complaint case which were pending before Learned Chief Judicial Magistrate, Rewari, have concluded and the petitioner and others have since been acquitted vide judgment dated 14.10.2022, copy of which has been placed on record.

9. In this situation, the contention raised by learned counsel for the petitioner is that continuation of the proceedings arising out of FIR No.273 dated 05.09.2015 registered at Police Station Dadri City and the consequent proceedings cannot continue, as they will be barred under Article 20(2) of the Constitution and Section 300 Cr.P.C.

10. Section 300 Cr.P.C. reads as under:

“(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.”

(2) to (6) xxxxxxxx (not relevant)

11. As is evident from the above-said provision, the essential conditions to invoke the bar under Section 300 Cr.P.C. are :-

- (i) that a person had been tried by a Competent Court;*
- (ii) that he has been so tried for the same offence or one for which he might have been charged or convicted at that trial, on same facts;*
- (iii) that he has been convicted or acquitted at the trial, and*
- (iv) that such conviction or acquittal is in force.*

If any of the above-said essential condition is missing, the principle of double jeopardy cannot be invoked.

12. In the afore-said circumstances, it is necessary to know as to whether the acquittal recorded by Learned Additional Chief Judicial Magistrate, Rewari vide judgment dated 14.10.2022 is still in force or not.

13. As such, respondent-State is hereby directed to intimate this Court as to whether any appeal against the judgment dated 14.10.2022 as passed by Learned Additional Chief Judicial Magistrate, Rewari has been filed against the petitioner and others or not.

Adjourned to 08.02.2023.”

4. As per the reply, filed today on behalf of the respondent, no

appeal has been preferred against the judgment dated 14.10.2022 passed by the Court of Additional Chief Judicial Magistrate, Rewari.

5. In view of the above, it is clear that acquittal recorded by learned Additional Chief Judicial Magistrate, Rewari has become final and, therefore, continuation of the proceedings in the FIR No.273 dated 05.09.2015, which are under challenge before this Court, shall be misuse of the process of the Court, as it will amount to double jeopardy.

6. In view of the legal position, discussed in the order dated 24.01.2023, this petition is accepted. FIR No.273 dated 05.09.2015 registered under Sections 420, 120B IPC and Section 3, 3A, 3B, 4, 5, 18, 23 of Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 at Police Station Dadri City, District Bhiwani (Now District Charkhi Dadri) (Annexure P.1) and all the subsequent proceedings including order of charge/charges dated 17.05.2016 (Annexure P.2) are hereby quashed.

May 11, 2023

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(DEEPAK GUPTA)
JUDGE

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