

CRM-M-53654-2018 (O&M) AND
CRM-M-29681-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: August 08, 2023
1. CRM-M-53654-2018 (O&M)

Dr. Manisha Singhal
.....Petitioner
versus

District Appropriate Authority (PC&PNDT), Karnal
.....Respondent

2. CRM-M-29681-2017 (O&M)

Dr. Manisha Singhal
.....Petitioner
versus

State of Haryana
.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Abhishek Sethi, Advocate for petitioner.
Mr. Rahul Dev Singh, Additional AG, Haryana.

ARUN MONGA, J.

Two petitions bearing No.CRM-M-53654-2018 and CRM-M-29681-2017 are being disposed of vide this common order/ judgment as the material facts and issues involved are common. Recitals herein are being taken from CRM-M-53654 of 2018.

2. In CRM-M-53654-2018, petitioner, a physician (Gynaecologist), seeks quashing of complaint dated 05.03.2018 (Annexure P-1) filed against her for offences under Sections 3, 4, 5 & 6 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, (hereafter referred to as the 'Act') read with Rules 9(4) and 9(6) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereafter referred to as the 'Rules') punishable under Section 23 of the Act. In connected CRM-M-29681-2017, she seeks quashing of an FIR No.699 of 01.11.2016 (Annexure P-1) lodged at Police Station, Asandh, District Karnal and consequential proceedings.

3. Relevant allegations in the complaint (Annexure P-1) are as under:

“xx xx xx. The following deficiencies were found in the aforesaid centre during the inspection carried out on 30.06.2016, 14.09.2016 and 15.09.2016:-

- i) As per the PC & PNDT Act, it is compulsory for registered centre to affix PNDT Board on the outer wall of the hospital, but the accused instead of affixing the said board on the outer wall of the Hospital, had kept the same on the table in the OPD room of the Hospital;
- ii) Since the accused holds an MBBS degree and a DGO Diploma, so, she can conduct ultra sound upon pregnant women, but the accused apart from the pregnant women, is conducting ultra sound examination upon other males and females of different ailments, for which, she is not competent;
- iii) The accused had done ultra sound examination upon Meena wife of Rajesh, Amanjeet wife of Vikramjeet, Suman wife of Balbir, Sonia wife of Sandeep, Savita wife of Amit, Rekha wife of Ashok, Meena wife of Dheeraj and filled Form "F" in which many discrepancies were found. After filling Form-F, ultra sound and MT was conducted upon Anju wife of Ram Parkash and Sonia wife of Naresh;
- iv) The accused after conducting ultra sound examination upon pregnant women namely Haseena wife of Parveen, Kavita wife of Baldev, Sarabjit wife of Sandeep, Hardeep wife of Rajvinder, Paramjit wife of Gulbaz Singh, Krishna wife of Rajbir, Rekha wife of Arvind, Reena wife of Paramjeet, Simrajit wife of Mewa Singh, did their abortion, but had not filled mandatory Form-F under PC & PNDT Act of pregnant woman in this regard. Number of patients had already consumed MTP pills (Kit) before abortion, whose abortion was done at the centre of the accused;
- v) The accused at her centre did abortion of more than 12 weeks pregnancy, upon Suman wife of Pawan, Suman wife of Sarwan, Anju wife of Ram Parkash, whereas the accused's centre is registered under MTP Act, for carrying out abortion of upto 12 weeks only;
- vi) The accused purchased total 214 MTP Kits (Akare Kits) from M/S. Jagdamba Medical Agency, Karnal and disbursed 149 kits to her patients, record pertaining to the sale of 65 MTP kits was not shown, and 23 MTP kit purchase bill was also not shown of other batches which were entered in the MP kits Register, serial numbers of the patients entered in the MTP register, was not filled on Form-1 and incomplete address was mentioned in Form-C and the stock register of MTP Kits was not shown;
- vii) The accused sent ultrasound report of her aforesaid centre for the month of July 2016 of total 918 patients, out of which 624 were pregnant women, 110 were other women, and 184 males, during verification of the record of the accused, ultrasound record pertaining to total number of 875 persons (734 were pregnant women and other women and 141 males) were found and no ultrasound record was found of remaining 43 cases. Similarly, for the month of August, 2016, as per monthly report, ultra sound examination upon 867 persons (737 of pregnant and other women and 130 males) were found to have been conducted, but upon verification, of record of total 870 persons (737 pregnant and other women and 130 male) were found and three reports of ultra sound examinations of three patients were not found,

In view of the aforesaid facts as enumerated, Dr. Sant Lal Verma filed aforesaid complaint on dated 25.10.2016 to SHO PS Assandh by re-asserting aforesaid facts and requested that since the accused has contravened the various provisions of Sections 3, 4, 5 & 6 of PC & PNDT Act and Rule 9(4) and Rule 9(6) of its Rules, and 3, 4, 5, of MTP Act and Rule 5 of its Rule, and as such FIR be registered under the PC & PNDT Act and MTP Act and after registration of the FIR copy of the same be sent to him.”

“xx xx xx. The SHO P.S Assandh, Karnal, after the conclusion of the investigation, has submitted a Kalandara under PC & PNDT Act qua the offences committed by the accused persons to the complainant, received in his office on 24.10.2017.”

4. On these allegations, a complaint dated 05.03.2018 was filed by the State through Chairman/District Appropriate Authority-cum-Civil Surgeon, Karnal against the petitioner in the court of Judicial Magistrate Ist Class, Asandh. The latter, after recording preliminary evidence, passed the impugned order dated 27.11.2018 (Annexure P-2) summoning the accused-petitioner for 06.12.2018 to face trial. Petitioner also seeks quashing the impugned order dated 27.11.2018 (Annexure P-2) impugned herein, apart from complaint and the FIR.

5. The petitions are *inter alia* premised on the following two pivotal grounds:

- i) In view of section 28 of the Act the police could not register and make investigation in the FIR against the petitioner on the same allegations which are the subject matter of the complaint against her.
- (ii) The Chairman of the District Appropriate Authority alone was not competent to file the complaint.

6. On merits, the factual allegations as set out in the complaint have been denied and *inter alia*, following assertions have been made in the petition:

“11. That the FIRST imputation against the petitioner is that the petitioner was supposed to depict a declaration that her USG Centre is registered under the PC & PNDT Act, 1994 at her premises and that the said declaration should have been on the outside wall of her centre whereas the same was found present in the OPD Room of the petitioner. This allegation in itself is so absurd that it needs no reply. Even then it may be submitted that the PC & PNDT Act, 1994 [Rule 4(1)(ii) of the PC & PNDT Rules, 1996] only mandates that such a declaration (in shape of a Board etc.) must be "displayed prominently at an USG Centre. The Act, however, does not specify the place where the same should be displayed.

12. That the SECOND allegation against the petitioner is also ill founded. It is the contention of the District Appropriate Authority-cum-Civil Surgeon, Karnal that since the petitioner holds a MBBS Degree and a Diploma in Gynecology & Obstetrics, she can only examine pregnant females with the aid of an Ultrasound Machine in pursuance to her registration under the PC & PNDT Act, 1994.

13. That the Hon'ble Delhi High Court in its judgment rendered in the matter of Indian Radiological and Imaging Association (Iria), Indian Medical Association, Sonological Society of India Vs. Union of India and another reported as 2016(227) DLT 538, while interpreting Rule 3(1)(b) of the PC & PNDT Rules, 1996, has held that a person holding a valid MBBS Degree can be a Sonologist; i.e. to say that the said person can conduct an Ultrasound upon any person. Therefore, the SECOND allegation against the petitioner is also bad in the eyes of Law.

14. That the *THIRD* allegation against the petitioner is also ill founded. This allegation in itself has been mentioned in the impugned FIR in two parts. The first part states that certain irregularities were found in the F-Forms of some patients, whose names have been mentioned in this allegation. A Show Cause Notice (mentioned herein above) was issued to the petitioner in this regard. The petitioner has narrated and clarified each one of the discrepancies qua these patients and the remaining doubts of the District Appropriate Authority-cum-Civil Surgeon, Karnal were clarified by the petitioner during the opportunity of Personal Hearing afforded to her. It is important to point out here that all of these patients were not pregnant and their Ultrasound examination revealed that they were only retaining products of conception i.e. to say that these patients were not pregnant, however, they were retaining some products of conception in their uteruses. Hence, the petitioner had only performed 'Dilatation and Curettage' (DNC) on these patients and had not performed MTP upon them. It may be said at this juncture that performing DNCs in such cases is a life saving procedure as if such a procedure is not performed then the products of conception can cause Septicemia in such cases which is a life threatening condition.

15. That in any case, the irregularities mentioned in this allegation were clerical mistakes and by no stretch of imagination, the same can be categorized as having been committed with an intention to violate the provisions and PC & PNDT Act or the rules framed thereunder. In fact, it is not in allegation against the petitioner that the above said discrepancies were made with an ulterior motive or with a view to suppress certain information about patients or to misuse the Ultrasonography machine for determination of sex of foetus.”

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“16. That the second part of this allegations relates to two patients, whose F-Forms were duly filled, they were examined with an aid of an Ultrasound Machine and thereafter, their pregnancies were terminated. Anju wife of Ram Prakash as well as Sonia wife of Naresh were cases of Intra Uterine Deaths (IUD); i.e. to say that the fetus in their womb had already died and if the same would not have been removed by way of performing MTP/ evacuation, the same would cause Septicemia & profuse bleeding Hence, it would not be wrong to submit that a patient of Intra Uterine Death cannot be labeled as a pregnant female by any stretch of imagination.

17. That the *FOURTH* allegation leveled against the petitioner also does not hold any water. All of the patients mentioned in this allegation were also not pregnant. Hence, the petitioner was not required by Law to fill F-Forms qua them. These patients gave history of having used MTP kits (a drug used for terminating pregnancy and after termination of pregnancy, no female patient can be categorize as pregnant), but none of these patients had bought a MTP kit from the petitioner. It is pertinent to mention at this juncture that the provisions of the PC & PNDT Act, 1994 or their rules framed thereunder do not mandate an operator of an Ultrasound Machine to fill up Form-F for a patient, who is not pregnant and admittedly all of the patients mentioned in the fourth allegation had already consumed a MTP kit.

18. That the *FIFTH* allegation against the petitioner states that the petitioner had performed a MTP upon three patients (named therein), who were bearing pregnancies beyond twelve weeks of gestation, whereas the petitioner had an authorization for performing MTPs upon patients below

twelve weeks of gestation. It would not be out of context to mention here that all of the above mentioned three patients had visited the Hospital of the petitioner in a state of emergency i.e. to say that all of them bleeding profusely and a MTP was performed upon them to save their lives.”

xx xx xx

19. *That Suman, Wife of Pawan was 14 weeks pregnant and when she reached the hospital of the petitioner. She was experiencing a severe pain abdomen and as bleeding profusely. Similarly, Suman Wife of Sharwan, who was 13 weeks and 6 days pregnant and she was also experiencing severe pain abdomen with excessive bleeding, when she reached the hospital of the petitioner. Anju, Wife of Ram Parkash, who was 12 weeks and 3 days pregnant, was experiencing severe pain abdomen, when she reached the hospital of the petitioner and presented herself as a case of PALLOR. Pallor is a condition, which is characterized with the paleness of skin and is an indication of internal bleeding. Anju's Ultrasound revealed that her fetus was dead.*

20. *That the fetuses of all the above said 3 cases were EVACUATED (evacuation is the apt medical terminology for the procedure performed and the same, by any stretch of imagination, cannot be categorize as MTP) to save the life of the pregnant females and prevent infection, because if the dead fetus was allowed to be retained in their womb, the same would have caused infection leading on to septicemia. It is pertinent to point out at this juncture that, from Assandh, Karnal is at a distance of 45 KMs; Jind is at a distance of 40 KMs; Kaithal is at a distance of 50 KMs and Panipat is at a distance of 55 KMs. That is to say all the major towns are at quite some distance and there was no occasion for the petitioner to seek second opinion or to refer the patients to any of the above said towns. The petitioner had no other option but to evacuate the fetus in order to save the life of the patients.”*

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22. *That even otherwise, all of the three cases of medical termination of pregnancy performed by the petitioner can be safely categorized as Incomplete Abortions, Inevitable Abortions and Missed Abortions.”*

7. In the reply filed by the respondent, the relevant specific details/particulars have been given, refuting the corresponding factual averments in the petition and showing that the petitioner had violated the provisions of the Act/Rules *ibid*.

8. I have heard the learned counsel for the parties and perused the record with their able assistance. Learned counsels for the parties have argued on the lines of their respective stand as mentioned above.

9. In **Hardeep Singh vs. State of Haryana and Ors¹**, the following questions about registration of FIR under the Act had been referred to and considered by the Division Bench:

- (i) 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?
- (ii) Whether the report under Section 173 Cr.P.C. along with the complaint of an Appropriate Authority can be filed to the Court?
- (iii) Whether neither FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly lies to the Court?

10. The Division Bench answered the questions as under:

- (i) 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 under Section 28 of the Act.
- (ii) 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 if the complaint that has been filed in accordance with Section 28 of the Act.
- (iii) 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.

11. It is not disputed that in present case, cognizance of the offence was taken by the Court on the complaint filed by the respondent. Perusal of section 28 of the Act shows that the complaint can be filed, *inter alia*, by the Appropriate Authority concerned or any officer authorized in this behalf by the Government or the Appropriate Authority. Complaint (Annexure P-1) shows that on 25.10.2016 the District Appropriate Authority unanimously had decided that the complaint in this case be filed. To my mind, the complaint in this case though formally signed alone and filed in the Court by the Chairman of Appropriate Authority has to be treated as having been filed by the District Appropriate Authority. In view of this and the law laid down by learned Division Bench, as stated above, I am unable to accept the contention of the learned counsel for the petitioner that the police could not register and make investigation in the FIR against the petitioner on the same allegations which are the subject matter of the complaint against

CRM-M-53654-2018 (O&M) AND
CRM-M-29681-2017 (O&M)

her and that the Chairman of the District Appropriate Authority alone was not competent to file the complaint.

12. In my opinion, it would not be just and proper for this Court in the instant proceedings only on the basis of documents and affidavits to express any definite opinion on the merits of rival factual version of the parties about the violation of the provisions of the Act/Rules by the petitioner. Taking into consideration the facts and circumstances of the case, it seems appropriate that the rival factual contentions of the parties be decided after production of their elaborate evidence and the same has been tested on the anvil of cross examination before the learned trial Court.

13. As an upshot of the above discussion, CRM-M-53654-2018 and CRM-M-29681-2017 are disposed of with above observation/ direction.

14. Pending applications, if any, shall stand disposed of.

(ARUN MONGA)
JUDGE

August 08, 2023
mahavir

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