

Rakesh Kumar

... Petitioner(s)

Versus**State of Haryana**

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. R.S. Rai, Sr. Advocate assisted by
Mr. Jasdev Mahandiratta, AdvocateMr. Chetan Mittal, Sr. Advocate assisted by
Mr. Mayank Aggarwal, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

SUDHIR MITTAL, J. (Oral)

The petitioner is a doctor by profession. He specialised in Radiography and is a certified Radiologist. The competent authority under the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the Act) got an FIR No. 37 dated 27.01.2014 registered against the petitioner and two other accused. Challan was prepared by the police on 21.08.2014 but was presented in Court only on 01.05.2015. Meanwhile, the competent authority had filed a complaint against the accused persons. The same was dismissed qua the petitioner. Thus, a revision was filed challenging the dismissal of the complaint against the petitioner. Meanwhile, the concerned Magistrate passed an order dated 25.08.2015 directing clubbing of the police challan with the complaint case. All the accused were discharged by the Magistrate vide order dated 12.10.2016 after considering the pre-charge evidence led.

Meanwhile, the Revision petition filed against the petitioner was dismissed

as having been rendered infructuous vide order dated 07.10.2015 on the ground of the challan filed in the FIR case having been clubbed with the complaint case. The order dated 12.10.2016 was challenged by way of a revision petition, which has been allowed vide impugned order dated 27.05.2022 and directions have been issued to the concerned Magistrate to frame charges against all the three accused.

Learned Senior Counsel for the petitioner has submitted that dismissal of the complaint against the petitioner resulted in his acquittal. Revision petition filed against this order having been dismissed as rendered infructuous, the order of acquittal has become final. Thus, no directions can be issued to frame charges against the petitioner. It is also submitted that a Division Bench of this Court in **CRM-M-4211 of 2014 titled as “Hardeep Singh and another Vs. State of Haryana and others” decided on 04.12.2014** has interpreted the provisions of the Act and has held that even though an FIR can be registered and a challan can be presented by the police, the Magistrate can take cognizance of the offence only on a complaint filed by the competent authority/ appropriate authority under the Act. Thus, the concerned Magistrate could not have considered the issue of framing of charges against the petitioner at all. Order dated 12.10.2016 was without jurisdiction so far as it pertains to the petitioner. The revisional Court has failed to consider this legal aspect and on this ground also the impugned order deserves to be set aside.

Learned State counsel has referred to the impugned order and has submitted that there was ample evidence of the petitioner having committed an offence and, thus, the order of his discharge was illegal. The revisional Court has, rightly corrected an error committed by the

Magistrate.

A perusal of Hardeep Singh's case (supra) substantiates the submissions made by the learned Senior Counsel for the petitioner so far as cognizance of the case is concerned. It is, thus, evident that once the complaint against the petitioner had been dismissed vide order dated 23.03.2015, the Magistrate could not have taken cognizance of the case against the petitioner on the police challan presented on 01.05.2015. Thus, consideration of the matter regarding framing of charge against the petitioner was itself illegal and without jurisdiction. The revisional Court has failed to consider this legal aspect.

Further, upon dismissal of the complaint against the petitioner he was acquitted of the offence allegedly committed. The said order has become final as revision filed there against was dismissed as having been rendered infructuous. The petitioner having been acquitted of the offence alleged to have been committed by him cannot be tried for the same offence again and, thus, issuance of direction to frame charge against him is also illegal.

In view of the above, the impugned order cannot stand legal scrutiny. It is, accordingly, set aside, so far as the petitioner is concerned.

Accordingly, the petition is allowed.

25.01.2023
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(SUDHIR MITTAL)
JUDGE

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No