

CRM-M-38661-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH203

CRM-M-38661-2019 (O & M)

Date of decision: 02.11.2023

MANMOHAN PAL SHARMA

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Rajbir Singh, Advocate,
for the petitioner.

Mr. G.S.Sandhu, DAG, Punjab.

RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed for quashing of FIR No.72 dated 05.06.2019 under Sections 4 and 5(2) of Pre-conception and Pre-Natal Diagnostic Techniques Act, 1994 (for short 'the Act') and Sections 420 and 120-B IPC, registered at Police Station Sadar Ludhiana and all consequential proceedings arising therefrom.

2. The brief facts, as involved in the present petition, are that respondent No.2-complainant moved an application dated 04.06.2019 with the police; stating therein that he had a secret information that one tout of Barnala Area is involved in the determination of sex of the foetus and the friend of the secret informer can help in apprehending the culprit. The team constituted by the Civil Surgeon, Sirsa, had contacted the friend of informer and asked him to fix the deal with the tout. The deal for determination of sex of the foetus was fixed for Rs.30,000/- at Ludhiana.

Thereafter, Mrs. Vijay Luxmi, Asha Worker, Sirsa, was joined as a decoy

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customer. The Civil Surgeon, Sirsa, had handed over Rs.30,000/- to Dr. Budh Ram, a team member, for the aforesaid decoy operation. On 04.06.2019, the team members, alongwith driver Surinder; started travelling in a private car. When the car of decoy patient had reached in front of Bhai Bala Ji Gurudwara, Daad, Ludhiana, another car bearing registration No.PB-10EG-3098 stopped near them. The rest of team members were watching the car of the decoy patient at a distance. In the meantime, help of the local police was also sought. Thereafter, the decoy; and one female alongwith two persons; proceeded somewhere behind the said car of decoy patient, but due to heavy rush of traffic, the team could not follow them, but waited for them in front of Gurudwara. After some time, the persons alongwith tout and decoy patient came back near the Gurudwara and the team tried to catch them. But they ran away in the car. However, the team picked up the decoy patient from Raikot and came back to Bhai Bala Ji Gurudwara, Daad. The decoy patient told the team members that name of one person, who conducted ultra sonography upon her, is Man Mohan Singh (present petitioner). She also stated that they had taken Rs.30,000/- from her after conducting USG and had told her that she has a female child in her womb. The friend of informer had revealed the name of tout as Manjit Kaur, ANM, resident of Rurki Kalan, Barnala. The decoy patient has also explained the site/house where the USG was conducted. On these allegations, FIR No.72 dated 05.06.2019 under Sections 4 and 5(2) of the Act was registered. Accordingly, the petitioner and his co-accused were arrested on 05.06.2019. Recovery of Rs.12,000/- was effected from the co-accused. During the investigation, Sections 420

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and 120-B IPC were added to the present FIR. After completion of investigation, report under Section 173 Cr.P.C., has been presented against the petitioner and the co-accused.

3. Counsel for the petitioner has relied, *inter alia*, upon the judgment rendered by the Division Bench of this Court in CRM-M-4211-2014, titled as '**Hardeep Singh and another Vs. State of Haryana and others**', decided on 04.12.2014, to contend that the Court cannot take cognizance of the offence under the Act, on the police report. Therefore, *de hors* any other consequences qua investigation of the matter, the FIR in question cannot exist on record of the case. Hence, it is submitted that the FIR in question deserves to be quashed. Counsel has further submitted that although even the Appropriate Authority has filed the criminal complaint in the same matter, however, that would be a different aspect to be dealt with by the Court, in accordance with law. But, the FIR cannot be permitted to continue; as independent proceedings in the matter.

4. Even counsel for the State has relied upon **Hardeep Singh's case (supra)** and has submitted that the police can register the FIR in the matter on request of the Appropriate Authority, however, it is only the Court which is prohibited from taking cognizance of the offence on the police report. In the present case as well, the Court has not framed any charge so far, though the report under Section 173 Cr.P.C. was presented by the police before the Court. Accordingly, it is submitted that even if the FIR is to be quashed, the material collected by the police during the investigation, cannot be wiped out from the record of the case. The said material can be utilized by the prosecution in the complaint case.

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5. Having heard the counsel for the parties, this Court finds some substance in the arguments raised by counsel for the petitioner. However, before proceeding further, it is apposite to have a reference to the judgment rendered by the Division Bench in Hardeep Singh's case (supra), on the reference specifically made to it regarding the issue of registration of FIR and consequences thereof qua the offences punishable under the Act. A relevant extract of the same read 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.”

6. A perusal of provisions of the Act also shows that power to investigate the matter has been conferred upon the Appropriate Authority, instead of the police. Not only that, even the power to conduct the search/seizure has been conferred upon the designated/appropriate authority, with a rider that such Appropriate Authority will proceed in the matter in accordance with the provisions as contained in the Cr.P.C. Therefore, *per se*, the police cannot register an independent FIR, on its own. However, since the power has been conferred upon the Appropriate Authority to investigate the matter, therefore, it cannot be ruled out that the

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Appropriate Authority, being a non-police organization, may seek assistance from the police in the matter of investigation, who is, otherwise, authorized to investigate all the cognizable and non-bailable offences under the provisions of Cr.P.C. As such, the material collected by the police during investigation conducted in the matter, cannot be wiped out only for the reason that the police is not authorized to record the FIR in the matter. Moreover, the Division Bench has also held in Hardeep Singh's case (supra) that the police can even register the FIR, it can investigate the matter and the material so collected can be utilized in the complaint filed by the Appropriate Authority. The Division Bench has also clarified that the only prohibition in the matter is qua taking cognizance by the Court on a police report, as such, and no more.

7. In view of the above, and as per the record available on the file, it is clear that a complaint is to be filed and has actually been already filed by the competent authority before the competent court. The police have also presented the report under Section 173 Cr.P.C., though directly to the Court. However, since the Court cannot take cognizance of the offence on the police report, as per the provisions of the Act and as per the judgment rendered in Hardeep Singh's case (supra), therefore, the trial Court has to restrain itself from proceeding further in the matter on a police report. However, since the result of the investigation has already come on record, therefore, record of the investigation can, very well, be made part of the evidence in the complaint case, subject to the proof of the same as per the law.

8. However, there is another complication in the matter. Once the

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FIR is registered, it has to be given a quietus in the manner prescribed under the Cr.P.C. and it cannot be just ignored even if a private complaint is filed by the competent authority. Once the FIR is registered, then either the police can file a reasoned report before the Magistrate under Section 157(2) Cr.P.C. to the effect that it is not a case worth investigation, or the police can file a report under Section 173 Cr.P.C., or the police can file the cancellation report. There is no other manner to wipe out the factum of recording of the FIR, as a factum of the criminal law. Therefore, to wipe out the factum of registration of the FIR, *per se*, a judicial order would be required. Otherwise, the FIR against the accused shall always stand against the accused for all times to come. But since in the present case, the cognizance is not to be taken on the police report, and the matter collected during the investigation, can only be used in the complaint case, therefore, the trial Court would not have any opportunity to deal with the FIR, as such. The factum of FIR would always stand against the accused irrespective of result of the complaint case. The aspect as to what will happen to the FIR after cognizance is taken on complaint case, has not been dealt with in the case of **Hardeep Singh's case (supra)**. The only way left out for the Court is to quash the factum of the registration of the FIR, while permitting the record of the investigation to be used in the criminal complaint. Ordered accordingly.

9. In view of the above, the present petition is partly allowed. The factum of the registration of FIR No.72 dated 05.06.2019 under Sections 4 and 5(2) of Pre-conception and Pre-Natal Diagnostic Techniques Act, 1994 (for short “the Act”) and Sections 420 and 120-B IPC, at Police

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Station Sadar Ludhiana, is quashed. However, the material collected by the police during the investigation of the said FIR, is permitted to be used as evidence in the complaint case, subject to the proof of the same, in accordance with law.

02.11.2023

parveen kumar

(RAJBIR SEHRAWAT)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No