

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

CRM-M No.54128 of 2019 (O&M)

Reserved on: 28.02.2023

Pronounced on: 17.03.2023

Dr. Anant Ram

... Petitioner

Versus

District Appropriate Authority (PC&PNDT), Hisar

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Abhishek Sethi, Advocate for the petitioner.

Mr. Chetan Sharma, Assistant Advocate General, Haryana
for the respondent/State.

MANJARI NEHRU KAUL, J.

The instant petition has been filed under Section 482 Cr.P.C. for quashing of criminal complaint bearing No.COMI/45/2019 dated 14.02.2019 (Annexure P-1) titled as 'State of Haryana vs. Sushil Kumar & others' under Sections 420, 120-B, 511 of the Indian Penal Code, 1860 (for short, 'the IPC') and Sections 6(A), 6(B), 6(C), 3(1), 3(3), 4(4), 23 and 25 of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred to as, 'the PCPNDT Act') along with all consequent proceedings arising therefrom.

In the case in hand, one FIR No.700 dated 18.12.2018 was registered at Police Station Barwala, District Hisar at the instance of Dr.Jaya Goel, Deputy Civil Surgeon, Hisar. As per the allegations levelled, in the FIR, accused Sushil, Prem, Mamta and the present petitioner Dr.Anant Ram had violated Sections 6(A), 6(B), 3(1), 3(3), 4(4), 23 and 25 of the PCPNDT

Act and committed offences under Sections 420, 511 and 120-B IPC by cheating, conspiring and taking money from innocent pregnant women for carrying out illegal sex determination tests.

On receipt of a secret information qua the illegal sex determination racket in existence in Janta Hospital, CHC Road, Barwala, State Appropriate Authority constituted a team comprising the following persons:

- (i) Dr. Jaya Goel, Deputy Civil Surgeon, Hisar;
- (ii) Dr. Anita Bansal, SMO, (Civil Hospital Hisar);
- (iii) Dr. Deepak Chaudhary, MO PPC Hisar.

The team conducted a sting operation by associating one pregnant lady by the name of Sunita, who acted as a decoy patient. When the decoy patient was taken to Janta Hospital, CHC Road, Barwala, one Mamta met her, who told her that accused Sushil would get the sex determination test carried out with the help of the petitioner. A demand of ₹30,000/- was made by accused Sushil for the said purpose. However, since the decoy patient had only ₹27,000/-, the same was handed over to accused Sushil. Accused Sushil informed the decoy patient that the petitioner had received ₹20,000/- out of the ₹27,000/- given to him and he would provide a portable Ultrasound machine for carrying out the sex determination test. Thereafter, Mamta, who was working as a staff nurse, along with one Prem (PRO of the petitioner) and the decoy patient were handed over the Ultrasound machine by accused Sushil after taking it from the petitioner and they started for Hisar. The raiding team, which was already stationed close by, on signalled started following the above accused and the decoy. The team apprehended

Prem and Mamta along with the illegal portable Ultrasound machine. Accused Sushil was apprehended from Barwala Bus Stand, and ₹15,000/- were recovered from his pocket. The currency notes recovered from accused Sushil matched with the same serial numbers of the currency notes which had been handed over to the decoy patient before going to the hospital. Pursuant to the registration of the FIR, on the basis of the same allegations, the complaint in question was instituted by Dr. Anamika Bishnoi, Deputy Civil Surgeon, (Family Welfare)-cum-PNDT Nodal Officer, Hisar under the PCPNDT Act.

Learned counsel for the petitioner, while praying for quashing of the complaint in question, has *inter alia* argued:-

(1) that even as per allegations, the petitioner neither illegally carried out the sex determination of the foetus nor the ultrasound machine which was procured for the said purpose was owned by him. Further, the alleged crime did not take place at the hospital of the petitioner, and no tainted money was received by the petitioner from the decoy. Therefore, prima facie no offence was made out against the petitioner under the PCPNDT Act and the complaint along with subsequent proceedings was thus, liable to be quashed.

(2) that as per Section 28 of the PCPNDT Act cognizance of offences could be taken by the Court only on a complaint made by the Appropriate Authority concerned or a person who had given notice of not less than 15 days to the Appropriate Authority qua the same.

(3) that cognizance could have only been taken by the Court on a complaint instituted by the Appropriate Authority consisting of 03 members

only. In support, learned counsel drew the attention of this Court to notification dated 07.11.2013 (Annexure P-8) vide which the Government of Haryana has appointed a 03 member Appropriate Authority at every District level under the PCPNDT Act comprising of (i) Civil Surgeon concerned as its Chairperson (ii) District Program Officer Women & Child Development Department along with (iii) the District Attorney concerned.

(4) that the complaint in question had not been validly instituted since it was not been signed by all the 03 members of the Appropriate Authority and had been instead instituted only by Dr. Anamika Bishnoi, Deputy Civil Surgeon (Family Welfare)-cum-PNDT Nodal Officer, Hisar. Since there was no provision under the PCPNDT Act for delegation of power by the authority to its Chairperson, therefore, the complaint in question could not have been instituted at the instance of the Civil Surgeon concerned, or the Deputy Civil Surgeon alone, without signatures of the other members of the District Appropriate Authority. In support, reliance was placed upon **‘Dr. Ritu Prabhakar vs. State of Haryana’ CRM-M-21764-2015 d/d 03.06.2016** and **‘Ishwar Singh Yadav vs. State of Haryana’ CWP-11171-2015 d/d 02.11.2017**.

Per contra, learned State counsel while vehemently controverting the submissions made by the counsel opposite, contended that the complaint in question was registered at the instance of Dr. Anamika Bishnoi, Deputy Civil Surgeon, (Family Welfare)-cum-PNDT Nodal Officer, Hisar who along with other members of the raiding team had been duly authorised by the District Appropriate Authority (in short, 'DAA') to proceed and take action against the accused persons. In support, learned

State counsel invited the attention of this Court to Section 28(1)(a) of the PCPNDT Act and vehemently submitted that the DAA was competent to authorise any officer to file a complaint under the PCPNDT Act and there could not be any bar on the Court to take cognizance upon a complaint instituted by such officer.

Learned State counsel also argued that Dr. Anamika Bishnoi, Deputy Civil Surgeon, (Family Welfare)-cum-PNDT Nodal Officer, Hisar had been duly authorised by the DAA by way of a resolution, which was duly signed by all the members including the Chairperson, to institute the complaint under the PCPNDT Act. In support, learned State counsel placed on record a copy of the said resolution.

Learned State counsel further argued that Dr. Anamika Bishnoi, Deputy Civil Surgeon, (Family Welfare)-cum-PNDT Nodal Officer, Hisar had been authorised by the Appropriate Authority as per the provisions of Section 28(1)(a) of the PCPNDT Act, to institute a complaint and it was not that the Appropriate Authority had delegated its powers to a third person. Learned State counsel while concluding his arguments submitted that during investigation it had come to light that the petitioner had been carrying out illegal sex determination tests of foetuses, hence, the technicalities of procedural laws could not be allowed to come in the way of punishing those guilty of committing such heinous offences.

I have heard learned counsel and perused the relevant material on record.

This Court does not find any force in the contention raised by the learned counsel for the petitioner that the complaint was not instituted

validly as it did not bear the signatures of all the members of DAA and the DAA had no powers to delegate this authority to the Chairperson of the DAA to institute a complaint.

In this regard it would be apposite to reproduce Section 28(1)(a) of the PCPNDT Act, which reads as under:-

“28. Cognizance of offences.

1. No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority;”

It is clear from a reading of the above provisions that Appropriate Authority has been empowered to authorise any officer to file a complaint under the PCPNDT Act.

It would be, therefore, relevant to reproduce the relevant extract of the complaint in question:-

“1. That complainant Dr. Anamika Bishnoi, Deputy Civil Surgeon (family Welfare), Hisar cum- PNDT Nodal officer, Hisar has been authorised by the District Appropriate Authority, Hisar under the provision of section 28(1)(a) of the Pre-Conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 and amendment 2002 hereinafter referred to as PC & PNDT Act (in short) vide notification No.1/18/88-2HB-II-97 dated 7/11/2013 duly issued by Govt. of Haryana in all district of Haryana.....”

A perusal of the above extract of the complaint reveals that it does find mention therein that complainant Dr. Anamika Bishnoi, Deputy Civil Surgeon (Family Welfare)-cum-PNDT Nodal officer, Hisar had been duly authorised by the DAA to institute the complaint in question, by way of a resolution.

Reliance placed upon **Dr. Ritu Prabhakhar's case (supra)** by learned counsel for the petitioner, would not further his cause as in that case there was no resolution vide which the Chairperson had been authorised by the Appropriate Authority to institute a complaint under the PCPNDT Act.

This Court at this stage cannot delve into the truthfulness or otherwise of the allegations which stand levelled in the complaint in question. It being a matter of trial would be duly appreciated by the Trial Court after the parties lead their respective evidence. This Court, therefore, is not inclined to invoke its inherent jurisdiction under Section 482 of the Cr.P.C. and quash the complaint in question.

Accordingly, the instant petition is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

March 17, 2023
rps/vinay

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