



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1068 OF 2024

Satish S/o Balasaheb Gaware
Age : 37 years, Occ : Medical Practitioner,
R/o Teachers Colony, Dhavleshwar, Jalna
Tq. and Dist. Jalna.

..APPLICANT

-VERSUS-

1. The State of Maharashtra,
Through Police Inspector,
Pimpalner Police Station,
Tq. & Dist. Beed
2. Mahadeo S/o Nanasaheb Dhakane
Age : 58 years, Occ : Police Sub-Inspector,
Pimpalner, Tq. and Dist. Beed.

..RESPONDENTS

...
Advocate for the applicant : Mr. A.R. Hange
APP for Respondent- State : Mr. G.A. Kulkarni
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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATED : 04th DECEMBER, 2024.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. The present application is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) seeking to challenge FIR registered against the applicant with Pimpalner Police Station, Tq. & Dist. Beed, vide Crime No.70/2022 for the offence punishable under Sections 304, 312, 314, 315, 316, 420, 201 read with Section 34 of the

Indian Penal Code (IPC), Sections, 3, 4(B), 5 of the Medical Termination of Pregnancy Act (MTP Act) and Sections 3, 3(A), 5, 6, 23, 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) along with Sessions Case No.254/2022 pending on the file of the learned Additional Sessions Judge, Beed, which is registered pursuant to the said FIR.

2. The FIR is lodged by one Mahadeo Nanasaheb Dhakane, who is serving as Police Sub-Inspector at Pimpalner Police Station.

3. As per the contents of the FIR, an Accidental Death Case with respect of demise of one Sitabai Ganesh Gade was registered on 06.06.2022, under Section 174 of the Cr.P.C., vide A.D. No. 14/2022 with Pimpalner Police Station. The said matter was handed over for investigation to one B.G. Aghav, Assistant Police Inspector with the said Police Station. During the course of investigation, it was revealed that deceased lady Sitabai Ganesh Gade had died due to "hemorrhagic shock due to intrauterine haemorrhage due to traumatic uterine perforation". The doctors conducting postmortem opined that the death was caused due to excessive bleeding on account of abortion of fetus. Interrogation of the brother of the deceased revealed that deceased had three daughters and her in-laws

as also family members on the paternal side desperately wanted a male child. She was carrying 18 weeks pregnancy in June, 2022. The family members learnt that one Dr. Manisha Shivaji Sanap conducts sex determination tests and accordingly, they approached her for determination of sex of fetus and found that it was of female child. Realizing this they approached a nurse named Seema for carrying out abortion. The abortion procedure was conducted on 05.06.2022, after which the deceased died due to excessive bleeding. On the basis of aforesaid facts detected during investigation, respondent No.2 lodged FIR in the matter.

4. The name of the present applicant does not appear as accused in the FIR. However, his name is subsequently arrayed as accused in the final report in relation to offences under the PCPNDT Act. Perusal of the final report under Section 173 of the Cr.P.C. demonstrates that the name of the present applicant is included in the charge-sheet on the ground that the sex determination was done by sonography machine owned by him.

5. After completion of investigation and filing of the charge-sheet, the matter came to be committed to learned Sessions Court and the same is pending before the learned Additional Sessions Judge, Beed, vide Sessions Case No.254/2022. The present proceeding is

filed seeking to quash the FIR and Sessions Case registered against the applicant.

6. Shri Anirudha Hange, learned Advocate for the applicant has raised two basic contentions, firstly, the Police Sub-Inspector is not the competent authority to initiate prosecution under PCPNDT Act and registration of FIR is not permissible for the offences under the PCPNDT Act, in as much as, the cognizance of offence under the said Act can be taken only on a complaint made by the appropriate authority or any Officer authorized by the Central or State Government or the appropriate authority for filing complaint in view of mandate of Section 28 of the said Act, and secondly, the period during which the offences alleged to have been committed i.e. June, 2022, he was in Jalna Central Jail in relation to another offence registered against him, vide Crime No.144/2022. He has demonstrated from the record that he was arrested on 08.05.2022 and released on bail by this Court vide order dated 24.11.2022.

7. Per-contra, Shri G.A. Kulkarni, learned APP for the State contends that since the FIR registered is not merely under the PCPNDT Act but IPC Sections are also involved, registration of FIR will not be barred. He would contend that since IPC Sections, which are cognizable in nature are also involved, the bar under Section 28 of the

PCPNDT Act will not apply. As regards the second contention that at the relevant time, the applicant was in jail, learned APP would submit that he had access to Cellphone in the jail, and therefore, possibility of involvement cannot be ruled out. He states that, actual involvement or otherwise will be determined only after recording the evidence during the course of trial.

8. At the outset, we may state that the allegations against the present applicant is restricted to offences under the PCPNDT Act alone. There are no allegations against him with respect to provisions of the MTP Act or IPC.

9. As regards cognizance of offences under the PCPNDT Act, Section 28 of the said Act prescribes that no Court can take cognizance of an offence under the said Act except on a complaint made by the appropriate authority or any officer authorized by the appropriate authority or the State Government or the Central Government. Even if private person intends to lodge complaint for the offence under the said Act, he is required to give 15 days notice of his intention to file a complaint to the appropriate authority specifying the offence alleged. The provision is couched in negative term which implies that it is absolutely mandatory. Two things emerge from reading of the provision, firstly that cognizance of an offence can be taken only

on a complaint made before the Magistrate and not by lodging FIR and secondly, the complaint has to be made only by the appropriate authority or any officer authorized by State or Central Government or appropriate authority or by any individual who has given a clear 15 days notice to State or Central Government or appropriate authority of his intention to file complaint. It is a settled legal principal that when a statute contemplates that a particular act should be performed in a particular manner it should be done in that manner only or should not be done at all. The said principle is clearly observed in breach in the present case warranting quashing of criminal prosecution against the present applicant.

10. Section 28 of the PCPNDT Act is also in the nature of a protection to persons against whom allegations regarding having committed offence under the said Act are made. Right to initiate criminal prosecution is conferred upon responsible authorities in order to extend protection against unwarranted litigation. Therefore, initiation of criminal prosecution under the said Act by a person not specifically empowered under the Act is prohibited. The respondent No.2, who is Police Officer is not a person competent to initiate the prosecution under the PCPNDT Act.

11. In view of the aforesaid fundamental defects which go to

the root of the matter the prosecution is liable to be quashed as not maintainable.

12. Even on facts, it is apparent that name of the applicant is included in Section 173 report only on the count that sex determination test was conducted through Sonography Machine owned by him. It is undisputed that at the relevant time, he was behind bars in relation to another crime. Although, a submission is made by learned APP that he had access to Cellphone while he was in jail, the call records filed along with the charge-sheet are only for period from 02.01.2022 to 08.04.2022. Thus, there is no material on record to indicate that at the relevant time, the applicant had made any phone call to any other accused persons, more particularly to Satish Sonawane, the accused No.5. Therefore, even on facts, the material on record does not remotely indicate any involvement of the applicant in the offence. We are therefore of the opinion that FIR and criminal prosecution against the applicant are liable to be quashed. We therefore pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) FIR registered against applicant - Satish S/o Balasaheb Gaware with Pimpalner Police Station, Tq. & Dist. Beed, vide Crime

No.70/2022 for offence punishable under Sections 304, 312, 314, 315, 316, 420, 201 read with Section 34 of the Indian Penal Code, Sections 3, 4(B), 5 of the Medical Termination of Pregnancy Act and Sections 3, 3(A), 5, 6, 23, 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 along with Sessions Case No.254/2022 pending on the file of the learned Additional Sessions Judge, Beed, are hereby quashed.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/