



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL WRIT PETITION NO. 765 OF 2023

DR. NIRMALA RAMPRASAD BAJAJ

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for the Petitioner : Mr. Nitin Keshavrao Chaudhari

APP for Respondent/State : Mrs. Pratibha J. Bharad

...

WITH

CRIMINAL WRIT PETITION NO. 777 OF 2023

DR. ANAND BANSILAL KARNAWAT

VERSUS

THE STATE OF MAHARASHTRA THROUGH DR. SURYAKANT
ARJUNRAO SABLE

...

Advocate for the Petitioner : Mr. Gaikwad Siddheshwar M.

APP for Respondent/State : Mrs. Pratibha J. Bharad

...

CORAM : SANJAY A. DESHMUKH, J.

DATED : 14th FEBRUARY, 2024.

PER COURT :-

1. These Writ Petitions are arising out of the order passed by the Additional Sessions Judge, Majalgaon, Dist. Beed in Criminal Revision Application No.23 of 2022 and Criminal Revision Application No.24 of 2022 respectively, decided on 13th April, 2023. Revisions were directed against the order passed by the learned Judicial Magistrate, First Class, Majalgaon, dated 14th November, 2022 in Regular Criminal Case No.174 of 2010 to frame charge against these petitioners under the various sections of Pre-Conception and Pre-

natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, "PCPNDT, Act").

2. The learned advocate for the petitioners has pointed out the grounds of objections that the learned Magistrate did not apply its judicial mind while passing the order and did not consider that Incharge designated officer is not empowered to proceed to file such complaint against the petitioners. He further pointed out the deposition of the complainant, particularly the cross-examination in which the designated officer has admitted that he is Incharge and there is no such notification. The learned advocate for the petitioners further pointed out that the reasons given by the Revisional Court are not legal and correct. He is relying upon the judgment of the Division bench of this Court passed in **Criminal Writ petition No.250 of 2015, decided on 16th October, 2015**. The para no.35 of the said judgment reads as under :-

"35. The learned Chief Judicial Magistrate, ordering issuance of process unfortunately failed to examine this material aspect which goes to the root of the case and ignored the settled position of law that summoning of an accused in a criminal case is a very serious matter as the criminal law cannot be set into motion as a matter of course. It is settled that, the order of concerned Magistrate taking cognizance of

the offence and issuing the warrant against the accused must reflect that he has applied mind to the facts of the case and the law applicable thereto. In the instant case, perusal of the order dated 28-3-2013 passed by the learned Chief Judicial Magistrate, Aurangabad in R.C.C. No. 541 of 2013 shows that the learned Chief Judicial Magistrate has without application of mind, mechanically ordered issuance of process against the present petitioner and more particularly, without even ascertaining and examining as to whether that complaint is made by the Authority/ Officer/Person competent to make it as per the provisions of Section 28 of the PCPNDT Act. The order issuing process is totally silent on this aspect and it is not reflecting any reasoning or prima facie conclusion of the learned chief Judicial Magistrate to the effect that the complaint is made by the Appropriate Authority notified under Section 27(2) of the PCPNDT Act. It is seen from the perusal of the order dated 28-3-2013 issuing process that the learned Chief Judicial Magistrate was totally oblivious of the mandatory provision of Section 28 of the PCPNDT Act regarding lodging of the complaint only by the Appropriate Authority or other officer/person specified therein. In the case in hand, because of bar which operates at the threshold itself, we are of the considered view that the prosecution of the petitioner in the criminal complaint, cannot commence as no cognizance of offence alleged against the petitioner can validity be taken by the learned Chief Judicial Magistrate.”

. The learned advocate for the petitioners submitted that the petitioners are thus illegally prosecuted and prayed for quashing the said proceedings.

3. In addition to above, the learned advocate for the petitioner in Criminal Writ Petition No.777/2023 pointed out that the complaint is not maintainable and the petitioner was only visiting faculty in radiology department and he is not responsible to maintain the record etc., as alleged by the complainant. He further pointed out the cross-examination of the complainant in which he admits that he is Incharge and there is no such independent notification to proceed further against such petitioner. He, therefore, submitted that the complaint is not maintainable against this petitioner.

4. The learned APP strongly opposed the petitions and pointed out the grounds averred in the affidavit in reply. The learned APP submitted that it is a matter of fact and it has to be decided on merits whether the complainant has authorized to file complaint or not. It is lastly prayed to reject the petitions.

5. Perused the complaint bearing GMP No.79 of 2015 lodged by the respondent and the impugned order passed by the learned

Magistrate. The order is that the offence is prima facie made out. Issue summons to all the accused for the offences under sections 3(2), 493, 29(1), 5(1), 3(3), 4(2), 4(3) B of PCPNDT Act. The learned advocate for the petitioners rightly pointed out that the learned Magistrate did not conclude as to whether the complainant has power to file such complaint. While delivering the judgment, the Additional Sessions Judge in revisions also did not come to the conclusion regarding the power of the complainant to file such complaint. The learned Additional Sessions Sessions Judge though considered the authority of **Dr.Ranjeet Ghatge Vs. State of Maharashtra in Criminal Writ Petition No.4194 of 2014 dated 17.08.2015**, failed to consider that the complainant has no such power and authority as designated complainant to file the complaint.

6. Further both the Courts erred in considering that the petitioner in Criminal Writ Petition No.777 of 2023 was only visiting faculty of Radiology Department and no such criminal liability imposed upon him to maintain the record. Thus the complaint filed against both the petitioners is having inherent defect of not having authority to file such complaint. Therefore, the order directing the petitioners to face the trial by issuing notices to them dated 15.10.2010 deserves to be set aside.

7. Considering all these reasons, both Writ Petitions deserve to be allowed. Both Writ Petitions are allowed in terms of prayer clause "B". Writ Petitions are disposed of accordingly.

(SANJAY A. DESHMUKH, J.)

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