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Crl.R.C.No.1066 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.R.C.No.1066 of 2024

and

Crl.M.P.No.9051 of 2024

1.M/s.Niharika Hospital,
Registration No.PNA/2326/2003,
Under PCPNDT Act,
No.324, Cuddalore Main Road,
Valappady, Salem District.

2.Dr.Selvamba

... Petitioners

Vs.

The District Appropriate Authority,
(Pre Conception & Pre-Natal Diagnostic
Techniques (Prohibition Sex Selection) Act, 1994,
Dr.Rathika, Senior Civil Surgeon &
Medical Officer, Government Taluk Hospital,
Sub District, Vazhapadi.

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C,
praying to call for the records relating to the order dated 06.05.2024 in
Crl.M.P.No.1151 of 2024 in C.C.No.88 of 2020 on the file of District
Munsif-cum-Judicial Magistrate, Vazhapadi and set aside the same and
allow the Revision Petition.



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For Petitioners : Mr.Naveen Kumar Murthy
for M/s.P.Pandiyaraj
For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed against the order passed in Crl.M.P.No.1151 of 2024 in C.C.No.88 of 2020 dated 06.05.2024 on the file of the learned District Munsif-cum-Judicial Magistrate, Vazhapadi.

2. The 2nd petitioner is running the 1st petitioner hospital, namely M/s.Niharika Hospital, including the scan centre attached with the hospital. On 20.04.2018, at 11.30 a.m., inspection was conducted by the Director of Medical and Rural Health Services, Chennai, The District Superintendent Mr.Kamalakannan, Dr.Natarajan, Radiologist, Cuddalore Government Hospital, the complainant/respondent herein and their team along with the Tahsildar of Vazhapadi and Village Administrative Officer, Vazhapadi, and found lapses on the part of the petitioner hospital and seized necessary documents including cash and found that the records were not properly maintained and also found 36 Pregnancy



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termination tablets. Thereafter, they have filed a complaint u/s 200 of Cr.P.C. in the year 2020, which was taken on file in C.C.No.88 of 2020 on the file of District Munsif-cum-Judicial Magistrate, Vazhapadi, for the offence u/s 28(1), 30 r/w 6(a) (b) (c) of PCPNDT Act, 1994 and Section 18, 23(1) (2) (3) (4) of PCPNDT Act, in which, the petitioners have filed a discharge petition in Crl.M.P.No.1151 of 2024 in C.C.No.88 of 2020, which was dismissed vide impugned order dated 06.05.2024. Challenging the same, the petitioners have filed the present revision before this court.

3. The learned counsel appearing for the petitioners submitted that as per Section 30 of PCPNDT Act, if the appropriate authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place, such officer may enter and search the premises and seize the documents in such place. However, in the present case, the respondent/P.W.1 and other officials, who entered the petitioner hospital premises were not authorized officer as per Sections 30 and 17 of the PCPNDT Act and during the cross examination, they have also



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accepted the same. On the sole ground, the discharge petition has been filed, however, the same was dismissed, which is wholly unsustainable. He further submitted that, the person, who is not an authorized person had seized documents based on which, a complaint was filed, which is without jurisdiction. Further, as per Rule 12(2) of PCPNDT Act, each and every page of the seized document has to be signed by the appropriate authority, however, in the present case, none of the procedure has been followed by the respondent and by the witnesses, thereby, on the above said ground, the discharge petition has been filed. However, the trial court has arrived at a conclusion that it is a mere technicality and based on the technicalities, discharge petition cannot be entertained and such an order passed by the trial court is perverse and the same needs interference.

4. On the above contentions, heard the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record.



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5. Time and again, this Court as well as the Supreme Court has cautioned the courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)*** wherein the Apex Court held as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:



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(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;



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(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6. The above decision of the Supreme Court unambiguously makes it clear that this Court can exercise the extra-ordinary power under Article 226 of the Constitution or the inherent powers under Section 482



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of Code of Criminal Procedure either to prevent abuse of the process of any Court or otherwise to meet the ends of justice. Further, if the charge do not disclose a cognizable offence and make out a case against the accused, and uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge and where there is an express legal bar engrafted in any of the provisions of the Code, then the Court can interfere with the charge sheet/complaint.

7. The Court below has dismissed the discharge petition after satisfying itself that the FIR is not attended with mala fide intentions or that the allegations made in the complaint are not uncontroverted. The discharge petition has been dismissed on the ground that mere technicality cannot be the basis to allow the discharge petition.

8. Applying the guidelines laid down in *Bhajan Lal's case*, a careful perusal of the order passed by the court below reveal that on



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technicalities and non-following of certain procedures, the petitioners have sought for discharge. The petitioners have not made any allegations of mala fide intent or that the allegations are absurd or improbable even taken at their face value. Applying the aforesaid guidelines, though not articulated in the order, the court below had rejected the discharge petition, which cannot be said to be perverse, arbitrary or unreasonable. Considering the offence alleged, interfering with the trial at this infancy stage by would not be in the interest of justice as the case on hand squarely attracts the guidelines in *Bhajan Lal's case*.

9. For the reasons aforesaid, this Criminal Revision Case stands dismissed with a direction to the trial court to dispose of the case in C.C.No.88 of 2020 within a period of three months from the date of receipt of a copy of this order. Consequently, connected criminal miscellaneous petition is closed.

25.06.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
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Note: Issue order copy today i.e., on **25.06.2024**.

M.DHANDAPANI, J.

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To

- 1.The District Appropriate Authority,
(Pre Conception & Pre-Natal Diagnostic
Techniques (Prohibition Sex Selection) Act, 1994,
Dr.Rathika, Senior Civil Surgeon &
Medical Officer, Government Taluk Hospital,
Sub District, Vazhapadi.
- 2.The Public Prosecutor,
Madras High Court, Chennai.

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