



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45108-2016 &
CRM-M-27226-2021
Reserved on 24.09.2024
Date of decision: 15.10.2024

CRM-M-45108-2016

Dr. Nayna Bansal ...Petitioner

Versus

State of Haryana and others ...Respondents

AND

CRM-M-27226-2021

Renu @ Renu Saini ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Abhishek Sethi, Advocate for the petitioner
in CRM-M-45108-2016.

Mr. Satish Saini, Advocate for the petitioner
in CRM-M-27226-2021.

Mr. Karan Garg, AAG, Haryana.

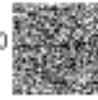
KARAMJIT SINGH, J. (ORAL)

1. Both these petitions are filed seeking quashing of complaint No.59 of 2016 (Annexure P-7 in CRM-M-45108-2016/Annexure P-6 in CRM-M-27226-2021) titled State through Dr. Sant Lal Verma, Chairperson, District Appropriate Authority-cum-Civil Surgeon, Karnal Vs. Dr. Naina Bansal and another under Sections 3, 4, 5 and 6 of Pre-Conception and Pre-



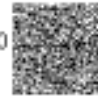
Natal Diagnostic Technic (Prohibition) and Sex Selection) Act. 1994 (in short 'PC & PNDT Act) and Rules 9(1)(3)(4) and 10(1) of its rules of 1996 punishable under Section 25 of PC & PNDT Act.

2. The brief facts of the case are that petitioner Dr. Nayna Bansal a practicing gynecologist was running her nursing home under the name and style of Jagdamba Hospital and Ultrasound Center, in area of Sabzi Mandi, Karnal. The said nursing home was duly registered under the provisions of PC & PNDT Act. On 09.01.2016, a team comprising of Dr. Rajinder Kumar, Deputy Civil Surgeon, Karnal, Dr. Kranti, Medical Officer, Sector-13, Civil Dispensary, Karnal and Gurcharan Singh, Drug Control Officer, Karnal was deputed to raid the nursing home of the petitioner Dr. Nayna Bansal, on the basis of secret information received regarding sex determination tests conducted in the said nursing home. A decoy patient namely Sarita (a pregnant lady) was selected. The said decoy patient contacted another accused Renu (petitioner in CRM-M-27226-2021) through Smt. Vimal a social worker. The deal was struck for Rs.14000/- to conduct sex determination test of foetus of Sarita in aforesaid nursing home. 14 currency notes of denomination of Rs.1000/- each bearing specific serial numbers were handed over to decoy patient and further paid to Renu (a tout) through Smt. Vimal. Then Dr. Nayna Bansal conducted sex determination test of unborn baby in the womb of Sarita, but no entry with regard to said test was made in the record maintained in the nursing home. The report regarding sex of the unborn child was handed over to the decoy patient through Renu and on receiving the signal, the aforesaid team reached the said nursing home but Dr. Nayna Bansal was not found present. Even her



mobile phone was found switched off. The team with the help of police officials made enquiry from Renu. On search of the purse of Renu, four currency notes of denomination of Rs.1000/- each, worth Rs.4000/- were found. The serial numbers matched with the currency notes which were handed over to decoy patient for handing over the same to Renu as charges for getting conducted sex determination test. The said currency notes worth Rs.4000/- and certain other documents found in the purse were seized by the aforesaid medical team. The room where ultrasound machine was installed was opened by the team in presence of Dr. Sanjay Bansal husband of Dr. Nayna Bansal and the record lying in the said room was also seized by the medical team. On checking of the said record, it was found that no entry was made in the said record regarding ultrasound examination of Sarita, a decoy patient. Sarita disclosed to the medical team that Dr. Nayna Bansal conducted her ultrasound without getting her past history and without making any entry of her name in the concerned register and other record of the nursing home. The ultrasound machine used for conducting sex determination test of Sarita was sealed in presence of Sulek Kumar and Harish Chander Singh.

3. A first information report having No.51 dated 10.01.2016 was also registered in Police Station Karnal City, alleging the commission of offence punishable under Section 23 of PC & PNDT Act. It was followed by a complaint Annexure P-7 filed by the District Appropriate Authority under Section 28 (1) of PC & PNDT Act, in the Court of Chief Judicial Magistrate, Karnal alleging the commission of offences against Dr. Nayna Bansal and Renu. The allegation against both of them was that they were

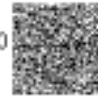


involved in illegal act of sex determination of unborn child by doing ultrasound test.

4. After completion of investigation, police presented final report under Section 173 Cr.P.C in the Court concerned.

5. The counsel for the petitioners while challenging the aforesaid proceedings including complaint Annexure P-7/Annexure P-6 and FIR Annexure P-4, have *inter alia* contended that the raiding team was having no jurisdiction to raid the nursing home of Dr. Nayna Bansal. The said team was not duly constituted and authorized by District Appropriate Authority as per the provisions of Section 17 of PC & PNDT Act. The police was having no jurisdiction to investigate the matter as Section 28 of PC & PNDT Act provides that no Court shall take cognizance of offence under this Act except on a complaint made by the District Appropriate Authority.

6. The counsel for the petitioners have further argued that in the instant case, complaint Annexure P-7/Annexure P-6 was lodged by the State only through Dr. Sant Lal Verma, Chairperson, District Appropriate Authroty-cum-Civil Surgeon, Karnal. The said complaint was not filed by the Appropriate Authority which is a multi member body as per Section 17 of PC & PNDT Act. The entire proceedings conducted by the raiding team and police officials were illegal and deserve to be quashed. In support of his contentions, the counsel for the petitioners referred to the latest decision of Hon'ble Supreme Court in ***Ravinder Kumar Vs. State of Haryana 2024 (4) RCR (Criminal) 491*** wherein under the similar circumstances, the complaint lodged by Civil Surgeon and FIR registered by the police under various provisions of PC & PNDT Act were quashed against the concerned

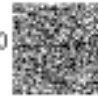


doctor who was alleged to be involved in illegal activity of pre natal sex determination. The counsel for the petitioners have also placed reliance upon the decisions of co-ordinate Benches of this Court in CRM-M-42679-2018 titled as ***Dr. Radhika Sapra and another Vs. State of Haryana***, decided on 20.05.2024 and CRM-M-21764-2015 titled as ***Ishwar Singh Yadav Vs. State of Haryana and others***, decided on 02.11.2013, to strengthen the case of petitioner(s).

7. On the other hand, the State counsel submits that after completion of investigation, police presented challan and District Appropriate Authority filed complaint Annexure P-7/Annexure P-6, as per mandate of Section 28 of PC & PNDT Act. It has been further submitted that the Chairman of District Appropriate Authority, Karnal was duly authorized by the said Appropriate Authority vide resolution Annexure R-5, to file complaint Annexure P-7/Annexure P-6. It has been further argued that the said complaint was filed as the petitioners violated the provisions of PC & PNDT Act and Dr. Nayna Bansal was found conducting sex determination test of unborn child in an illegal manner using the ultrasound machine installed in her nursing home. The said ultrasound machine was sealed by the medical team which was duly constituted by the District Appropriate Authority. It has been further contended that at this stage, no interference is warranted by this Court.

8. I have considered the submissions made by counsel for the parties.

9. The statutory provisions of PC & PNDT Act which are relevant for deciding the matter in controversy are reproduced herein:-



Section 2(a)- “Appropriate Authority” means the Appropriate Authority appointed under section 17;

6. Determination of sex prohibited.—

On and from the commencement of this Act,—

(a)no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

(b)no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

(c)no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.

Section 17-Appropriate Authority and Advisory Committee.—

(1)The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.

(2)The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.

(3)The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,—

(a)when appointed for the whole of the State or the Union territory, consisting of the following three members:—

(i)an officer of or above the rank of the Joint Director of Health and Family Welfare—Chairperson;

(ii)an eminent woman representing women’s organisation; and

(iii)an officer of Law Department of the State or the Union territory concerned:Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:Provided further that any vacancy occurring therein shall be filled within three months of the occurrence;(b)when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

(4)the Appropriate Authority shall have the following functions, namely:—

(a)to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;

(b)to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;

(c)to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;

(d)to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;



(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;

(f) to create public awareness against the practice of sex selection or pre-natal determination of sex; (g) to supervise the implementation of the provisions of the Act and rules;

(h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

(5) The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

(6) The Advisory Committee shall consist of—

(a) three medical experts from amongst gynaecologists, obstericians, paediatricians and medical geneticists;

(b) one legal expert;

(c) one officer to represent the department dealing with information and publicity of the State Government or the Union Territory, as the case may be;

(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

(7) No person who has been associated with the use or promotion of pre-natal diagnostic techniques for determination of sex or sex selection shall be appointed as a member of the Advisory Committee. (8) The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon: Provided that the period intervening between any two meetings shall not exceed the prescribed period.

(9) The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed.

Section 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; or

(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court. Explanation.—For the purpose of this clause, “person” includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.



(3)Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

Section 30. Power to search and seize records, etc. —

(1)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 Authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2)The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

10. It is well settled law that if a special statute lays down specific procedure, the procedure laid down under general statute shall not be followed.

11. Now adverting to the facts of the present case, it is pertinent to note that impugned complaint Annexure P-7/Annexure P-6 was filed against the petitioners by the State through Dr. Sant Lal Verma, Chairperson, District Appropriate Authority-cum-Civil Surgeon, Karnal.

12. As per notification dated 07.11.2013 Annexure P-1 issued by the Haryana Government, the Appropriate Authority for the District, consist of the following, namely:-

- a) Civil Surgeon-Chairperson*
- b) District Programme Officer Women and Child Development Department-Member*
- c) District Attorney-Member*

13. The Civil Surgeon is the Chairman of the Appropriate Authority. The Hon'ble Apex Court in **Ravinder Kumar's case** (supra) has observed that looking at the object of sub section (1) of Section 30 and the



express language used therein, only the Chairman or any other member acting alone cannot authorize search under Sub Section (1) of Section 30. It must be a decision of the Appropriate Authority.

14. On perusal of Annexure R-1 i.e. office order date 09.01.2016, it appears that the decision to conduct a search in the nursing home of Dr. Nayna Bansal was taken only by Civil Surgeon, Karnal i.e. Chairman of Appropriate Authority. There is no mention that the said decision was taken collectively by the Appropriate Authority consisting of Chairman and two members.

15. It will be relevant to note the observations of this Court in **Ishwar Singh Yadav's case** (supra) which are as under:-

“Be that as it may, the fact remains that there is no such provision either under the Act or Rules for delegating the powers by the members of the District Appropriate Authority, therefore, the procedure adopted by the other members of the District Appropriate Authority is totally illegal. If they had to delegate their powers to the Civil Surgeon like this, then there is no need for constituting the Committee of three members which is actually put in place so that one member may not pass arbitrary orders and all the decisions are taken by the meeting of minds.

This is not the scheme of the Act because the Act provides that all the decisions have to be taken by the District Appropriate Authority and the Civil Surgeon has not been given any exclusive power. Thus other two questions are also decided in favour of the petitioner, holding that the Civil Surgeon cannot act himself as the District Appropriate Authority as the decision has to be taken by the District Appropriate Authority in which all the three members are to be involved. Since there is no such provision either in the Act or the Rules shown to the Court during the course of hearing in this regard, therefore the letter dated 15.9.2015 by which other two members have delegated the Authority to the Civil Surgeon is erroneous and illegal.”

16. In the instant case, the State counsel has referred to resolution Annexure R-5 in order to establish that the two members of Appropriate Authority, Karnal duly authorized Chairman of the Appropriate Authority to lodge complaint against Dr. Nayna Bansal and Renu. However, from the perusal of Annexure R-5, it transpires that the case was discussed in the meeting of District Advisory Committee on 30.09.2016 and with the consent of all the members, decision to file a complaint under PC & PNDDT



Act against Dr. Nayna Bansal owner and operator of Jagdamba Hospital and Ultrasound Center, Karnal, was taken. There is nothing recorded in the Annexure R-5 that the other two members of the Appropriate Authority delegated their powers and gave their consent to Dr. Sohan Lal, Civil Surgeon, Karnal to file complaint even on their behalf, he being Chairman of District Appripriate Authority, Karnal.

17. A perusal of FIR Annexure P-4 shows that the said FIR was registered only on behest of Dr. Sohan Lal on the basis of the report submitted by the raiding team. This Court has already held that the said raiding team was not duly constituted as per the provisions of PC & PNDT Act. This Court is also of the view that even the impugned complaint Annexure P-7/Annexure P-6 was not filed by the Appropriate Authority which is a multi member body.

18. As the entire process from its inception was vitiated, continuing prosecution based on such illegal proceedings will amount to abuse of the process of law. Thus, the impugned complaint Annexure P-7/Annexure P-6 and FIR Annexure P-4 are not legally sustainable.

19. Consequently, both the petitions are allowed and criminal complaint No.59 of 2016 titled State through Dr. Sant Lal Verma, Chairperson, District Appropriate Authority-cum-Civil Surgeon, Karnal Vs. Dr. Naina Bansal and another under Sections 3, 4, 5 and 6 of Pre-Conception and Pre-Natal Diagnostic Technic (Prohibition) and Sex Selection) Act. 1994 and Rules 9(1)(3)(4) and 10(1) of its rules of 1996 punishable under Section 25 of PC & PNDT Act and all the subsequent proceedings arising thereof are quashed. FIR No.51 dated 10.01.2016, registered in Police Station Karnal City, under Sections 23 of PC & PNDT Act is also quashed.

15.10.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No