



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25680-2019
CRM-M-49543-2019
DECIDED ON: 06.08.2024

1.
AMARJIT SINGH KALRA

.....PETITIONER

VERSUS

DISTRICT APPROPRIATE AUTHORITY AND ANR

.....RESPONDENT(S)

2.

DR. GURDARSHAN IQBAL

.....PETITIONER

VERSUS

DISTRICT APPROPRIATE AUTHORITY AND ANR

.....RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anurag Jain , Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

This court shall be Disposing of , both the connected matter as
numbered CRM-M-25680-2019 and CRM-M-49543-2019 as titled
“Amarjit Singh Kalra v/s District Appropriate Authority and Anr” and
DR. Gurdarshan Iqbal v/s District Appropriate Authority and Anr”
respectively, vide this order.

1. Relief Sought

This petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of criminal complaint No.35/2018-CHA/104/18-RBT/274/16/03/19 titled as Ramesh Pal vs. Dr. Parampreet Singh Kalra and others (Annexure P-7) filed under Sections 3A, 5, 18, 23 and 29 of Preconception and pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994, herein-after referred to as PC&P.N.D.T Act pending before the Court of learned Judicial Magistrate 1st Class, Zira District Ferozepur, subsequent summoning order dated 06.08.2018 (Annexure P-8) and notice of accusation dated 16.10.2019 (Annexure P-12).

2. Facts

The factual matrix pertain to the case is that the father of the petitioner in the year 1999, constructed a building used as a hospital, namely Kalra Hospital. In the hospital the petitioner Holder of MBBS degree and his younger Brother Parampreetpal Singh Holder of degree of bachelor of dental sciences treated the patients of their respective subjects only, in the hospital consultant doctors also came from outside and treated the patients. In the year 2014 the petitioner leased one room on the first floor of the said building from his father Sr. Amarjit Singh for running an ultrasound Centre in the name and style of Sigma-6 Scan Centre, consequently getting registered under the PC&P.N.D.T Act with the Respondent No. 1 as a non-invasive centre, whereby the petitioner was recorded as its owner and operator, subsequently in 2018 a new machine was purchased and the registration was revised on 3.10.2018 (Annexure P-1 copy). Further Respondent No. 1 on 16.09.2016 was allegedly informed by Sh. Ramesh Dutt Director of speed network Private Limited that Sigma-6 ultrasound Centre along with Dr Parampreetpal Singh and one Charanjit Kaur allegedly engage in sex detection test illegally. Allegedly on 16.09.2016 one decoy patient was sent with ₹20,000, by the Respondent No. 1, wherein this decoy met Charanjit Kaur who demanded ₹25,000 thereafter she made a call to one Satnam Singh and sent decoy to the first floor of the Kalra hospital where Sigma six ultrasound centre was located, the petitioner and his brother, Dr Parampreetpal Singh took ₹20,000 allegedly conducted sex detection test. At

the signal of the decoy Respondent No. 1 along with the police party allegedly arrived at the spot. Whereby Dr ParampreetPal Singh allegedly escaped from the spot and recovery of ₹8000 was affected from Charanjit Kaur, and the balance payment was allegedly made to Dr ParampreetPal Singh also the entire operation was allegedly conducted under the supervision of petitioner's father in their hospital. On the 16.09.2016 at 10:15 AM one person namely Ramesh Dutt was also accompanying the team of doctors reached the hospital, whereby Ramesh Dutt give a slap Charanjit Kaur while enquiring, this is Dr. Gurdarshan Iqbal Singh, to which she declined. Thereafter the team of doctors Ramesh Dutt check the records of the visiting patients and the ultrasound machine where is nothing wrong in the records as alleged hereinabove was unearthed.

The respondent on 16.09.2016 give a hand-written complaint on the basis of which FIR No. 103 dated 16.09.2016 under section 3A,5,18,23,29 under Rule 4,9 PC&P.N.D.T. Act, 1994 police station Mukhu was registered(Annexure P-2).

Post recovery effected of ₹8000 from Charanjit Kaur Dr. ParampreetPal Singh was arrested and later enlarged on bail. The signed statement of the team of doctors who conducted the raid including Dr Jay Singh, civil surgeon, Ferozpur, Dr. Tarun Pal Kaur Sodhi, in charge, P.N.D.T, Ferozpur, Om Prakash, District Coordinator, P.N.D.T, Ferozpur was recorded by the police. Where in the doctors made a statement that they have checked the records of ultrasound Centre and have even scanned the ultrasound machine of the said centre but have failed to realise any records of conducting the ultrasound of the decoy(Annexure P-3 colly). The mother of the petitioner Gurbachan Kaur thereafter submitted a complaint to the police authorities stating her husband and sons having been falsely implicated in the case. Subsequently a thorough investigation of police was conducted where it was found that the petitioner, his father Amarjit Singh and Dr Parampreetpal Singh are all innocent as per the enquiry report dated 28.10.2016 and presented challan under section 173 Cr.P.C. against Charanjit Kaur and Satnam Singh(Annexure P-5). Whereby the challan was presented in the court of Area Magistrate it was pointed out that in the matter

of P.N.D.T. only complaint is competent, thereafter Respondent No. 1 in view of notification dated 04.05.2018(Annexure P-6) issued an authority letter dated 3.08.2018(Annexure P-6/A) in favour of SMO, sub-division Hospital, Zira to file a complaint against all persons arrayed as an accused in the FIR No. 103 dated 16.09.2016. Also before filing the complaint dated 6.08.2016 by the Respondent No. 2 (Annexure P-7) no advice with regards to section 17(5) of PC&P.N.D.T. Act was taken by the District Appropriate Authority from the District Advisory Committee as constituted under section 17(6) of PC&P.N.D.T Act. Thereafter the petitioner was summoned by the Ld. Magistrate vide order dated 6.08.2016 (Annexure P-8). Subsequently complaint dated 6.08.2018 and the challan presented for FIR No. 103 dated 16.09.2016 were clubbed together vide order dated 7.09.2018 (Annexure P-9). Further vide order dated 10.09.2019 accused Dr ParampreetPal Singh was declared as a proclaimed person and the case adjourned for the pre-charge evidence of the complainant (Annexure P-10). On the next date of hearing i.e. 16.10.2019 lawyers give a call for abstaining from work on the demand of establishment of family camp courts at the sub-division ,Zira. On the very same day i.e. 16.10.2019 notice of accusation was served upon the petitioner and the co-accused in the absence of the council and the hearing was deferred to 11.12.2019 for recording of complainant evidence.

3. Contentions

On behalf of the petitioner

The learned counsel for the petitioner contends that no reason has been made out for summoning the petitioner as the Ld. magistrate has not even recorded the allegations qua the petitioner and has arbitrarily issued notice as though it was a civil matter without applying a judicious mind. He contends further that the bald allegations allegedly carrying out of sex determination of a decoy patient against the present petitioners are absolutely false and unsustainable as there is no evidence qua the aforementioned allegations on the basis of which the instant complaint was registered. He also contends that the alleged recovery of ₹8000 has been affected from Charanjit Kaur whose details of currency is alleged to have already been recorded by Respondent No.1 and the recovery of ₹12,000 has

been effected from one Satpal Singh vide recovery memo dated 16.10.2016 (Annexure P-13) contrary to the alleged balance amount being paid to Dr Parampreet Pal Singh, subsequently also failed to connect Charanjit Kaur and Satpal Singh to Kalra Hospital as they are neither employees nor are connected to the hospital in anyway.

The learned counsel for the petitioner further argues that the respondents intentionally changed the original version of the complaint as written by Respondent No. 1 which were later recorded in the FIR No 103, wherein no role has been attributed to the petitioner regarding conducting of sex determination test. The compelling ration to the respondents for erroneously changing the original version is based on the duly signed statements as made by the team of doctors(Annexure P-3) who found the allegations to be baseless and false thus declaring the petitioner, innocent vide the challan under 173 CrPC (Annexure P-5) and also vide enquiry report(Annexure P-4).

He submits that the raiding team under section 30 read with rule 2 of the PC&P.N.D.T Act ought to have prepared a search and seizure memo pertaining to the records of ultrasound centre had there been any violation, but as nothing wrong was found at the alleged spot of occurrence therefore, no documentation was carried out. Not even the proceedings for cancellation or suspension of registration certificate as provided for under section 20 of PC&P.N.D.T Act. The counsel further submit that the provisions as prescribed under section 30(2) of PC&P.N.D.T Act read with Rule 12 wherein joining of an independent witness for witnessing the whole proceeding is an essential requirement of law was also not followed as there is no independent witness to the whole proceeding which culls out the entire proceeding to be frivolous.

The counsel also contends that as per the notification dated 4.05.2018(Annexure P-6) the District Appropriate Authority is a multi-member authority in any proceedings how to be carried out with consent and permission of the whole of the appropriate authority and not by the chairman alone, without the concurrence of other members of the multi-member body.

And as per the perusal of the authority letter (Annexure P-6/A) it is

crystallised that the Respondent No. 1 issued the same under the guise of the District Appropriate Authority in his individual capacity it is therefore illegal and arbitrary. Also, District Appropriate Authority is duty-bound to seek advice from District Advisory Committee as notified by Government of Punjab vide notification dated 8.12.1999 (Annexure P-16) but the instant complaint was registered without seeking advice from the same. Therefore the actions of the District Appropriate Authority as carried out only by the chairman alone are illegal and void *ab initio*.

On behalf of the respondent

The learned counsel for the Respondents contends that the petitioner has not approached this court with clean hands and has concealed material facts and is trying to mislead the court as the as the petitioner along with doctors namely Dr. Paramjit Singh Kalra, Dr. Darshan Singh Kalra, Arijit Singh Kalra Charanjeet Kaur and Satpal Singh were running a hospital where they used to conduct sex determination test violation of PC&P.N.D.T Act and were caught red handed by the police after laying the trap.

It is further argued that the complaint has been filed by the District Appropriate Authority cum civil surgeon empowered under section 28(1)(a) of PC&P.N.D.T Act ,1994 and that the District Appropriate Authority-Cum-Civil Surgeon is a competent person to institute the aforementioned complaint against the accused person liable under the act.

4. Analysis

This court on consideration of the discussions hereinabove is of the view that the Civil Surgeon, Ferozpur has exercised the Authority erroneously as the authority letter was issued without concurrence of other members of the District Appropriate Authority which in itself is a multimember body as provided for in section 17(2)&(3) and 28(1)(a) of PC&P.N.D.T Act the same is further corroborated vide the law laid down by the coordinate bench of this court in case titled as **“Ishwar Singh Yadav vs State of Haryana”** and others bearing **CWP No. 11171 of 2015** (Annexure P-14) and as held by the full bench of this court in **Criminal Writ petition**

No. 977 of 2016 titled as “Dr Zoni Jain and others versus State of Punjab and others.”

Section 17(2)&(3) and 28(1)(a) of PC&P.D.N.T Act, 1994 are both reproduced hereinbelow:-

“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 Appro-

priate 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) iii) an eminent woman representing women’s organization; and

an officer of Law Department of the State or the Union territory concerned:”

"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"

This court having persued the file and hearing the avernments fut forth by both the Ld. Counsels, and also taking into consideration the above reproductions of the the PC&P.N.D.T Act is of the view that the instant complaint deserves to be quashed since delegation of power itself was defective as is crystallized on persual of Annexure P-6/A of the petition and also of the letter as produced by Mr. Rajiv Verma, DAG, Punjab, in pursuance to the previous order, on instructions from SMO Dr. Balkar Singh.

5. Decision

It is evidently clear from the aforementioned that there is no delegation whatsoever and the complaint as instituted is only at the behest of complainant, thus is liable to be quashed.

The petitions are therefore, allowed.

(SANDEEP MOUDGIL)
JUDGE

06.08.2024
Sham (P)

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