

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: February 20, 2024
Pronounced on: February 26, 2024

CRM-M-39383-2021

Dr. Shobha

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Aman Pal, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner prays for quashing of FIR No.41 dated 10.02.2021, registered at Police Station Narwana City, District Jind, under Section 3, 4 and 5 of the Medical Termination of Pregnancy Act, 1971 (*hereinafter referred as 'the MTP Act'*), besides quashing the final report under Section 173 Cr.P.C. and the subsequent proceedings arising therefrom.

2.1 FIR was lodged on the complaint of Dr. Pale Ram, Team In-charge – cum – Deputy Civil Surgeon (PNDDT), Jind against petitioner Dr. Shobha, Director of Shubham Hospital, Dhaura Kuan, Narwana. It was alleged that the Civil Surgeon, Jind had received secret information against some people, indulging in illegal termination of pregnancy. A

raiding team was prepared consisting of Dr. Pale Ram, Deputy Civil Surgeon, PNDT; Deepak Kumar, Health Officer, CHC, Ujhana; Dr. Hardeep, LMO, Civil Hospital, Narwana; and Vikas Deshwal, Legal Assistant, PNDT Cell, Jind.

2.2 On 10.02.2021, the raiding team reached Hatho for inspection, where information was received that petitioner being Director of Shubham Hospital is doing the illegal termination of a pregnant lady, namely, Ruman wife of Pawan and the same was in process. Said Ruman was contacted. On checking her ultrasound report, it was found that ultrasound was conducted on 07.02.2021 from Gupta Ultrasound Centre, Narwana, in which fetus was reported to be of 8.5 weeks and an incomplete fetus was shown. The pregnant woman Ruman told the team that she had met Dr. Shobha of Shubham Hospital on 07.02.2021 and had told her that she wanted to keep the fetus, give birth to the child and did not want any termination or abortion, but Dr. Shobha (petitioner) told her that it was impossible to keep the child alive and that she will get it cleaned. After saying so, petitioner injected injections and placed two tablets directly in the body of pregnant woman Ruman and gave some tablets to intake. ₹1,600/- was charged for all the medicines. Ruman told further that petitioner had called her after 3-4 days, and that she will visit the petitioner on 10.02.2021. Raiding team sought help of the said woman for taking action against the petitioner.

2.3 Raiding team along with the pregnant woman and her

husband went to Narwana on 10.02.2021 at about 4 – 4:30 pm and got the pregnant woman checked up from Dr. Shashi Prabha. On her advice, ultrasound of Ruman was conducted at Bharat Ultrasound Centre, Narwana, which gave the following report:

- i) uterus is enlarged in size and shows single gestational sac like structure in lower uterine segment with fetal within it.
- ii) The Fetal node measures 11 mm corresponding to 7 weeks, 2 days.
- iii) Cardiac activity not appreciated.
- iv) Decidual reaction seen all around.
- v) Bilateral adnexa was normal. No solid/cystic tesion is seen.
- vi) No free fluid in POD.

Impression : - single G Sac with fetal node without cardiac activity in endocervical canal suggestive of miscarriage in process.

2.4 After getting the ultrasound done of pregnant woman Ruman, she went to Shubham Hospital with her husband, where Dr. Shobha made her to lie down on the bed and started the procedure for terminating her pregnancy.

2.5 It is during the above process that raiding team reached there. The pregnant woman Ruman was found lying on the bed. She had already been given some injections. A person, namely Neetu Singh, working in the hospital, was in the process of giving glucose to the pregnant woman. Petitioner - Dr. Shobha was present. Team after giving their introduction started the inspection. Two empty strips of Misoprostol tablets were found

lying in the dustbin of the labour room in the clinic, which were taken into possession by the team vide a separate parcel. The checking of OPD register of Shubham Hospital revealed that at OPD N: 10070 and Sr. No.03 dated 07.02.2021, there was entry of pregnant woman Ruman. The Team recorded the statement of Ruman and then got her admitted in Civil Hospital, Narwana for completing the process of termination of pregnancy.

2.6 FIR further states that petitioner used to earlier terminate the pregnancies and that one such termination of pregnancy was done on pregnant lady Nitasha W/o Hardeep, aged 29 years, resident of Hatho by putting medicines of abortion in her body (vagina) on 26.10.2020. Statement of said pregnant lady Nitasha was also recorded. It was further alleged in the FIR that petitioner was not authorized for termination of the pregnancy, as per Rules 2003 of the MTP Act. The team sealed the Shubham Hospital. Petitioner was arrested. After conducting necessary investigation, final report was presented in the Court concerned.

3.1 Seeking quashing of the FIR and the final report under Section 173 Cr.P.C., it is contended by learned counsel that the petitioner and her husband are in medical profession being B.A.M.S. from Shri Krishan Govt. Ayurvedic College, Kurukshetra, for the last 20 years. Petitioner has performed more than 1800 normal deliveries. She has been falsely implicated in this case on the basis of false and concocted story.

3.2 Learned counsel for the petitioner contends further that as per

the statement of patient Ruman, she was simply lying on the bed for checkup and that nothing was done qua termination of her pregnancy, when the raid was conducted. She was transferred to the Civil Hospital, where procedure of termination of her pregnancy was conducted.

3.3 Learned counsel contends further that cause of action to invoke Sections 3, 4 and 5 of MTP Act has not arisen. Learned counsel has referred to Sections 3, 4 and 5 of the MPT Act, besides Section 2(e) of the Act in order to contend that it is only the termination of pregnancy by a person, who is not a registered practitioner, which is a punishable offence, but in the present case, since termination of pregnancy was not done by the petitioner, so alleged offences are not made out.

4. Strongly opposing the petition, learned State counsel contends that it is on 07.02.2021 when the petitioner started the procedure for termination of pregnancy by injecting injections in the pregnant woman Ruman and by placing two tablets in private parts of her body. Learned State counsel further submits that at the time, when raiding team conducted the raid at the hospital of the petitioner, the patient Ruman was lying on the bed and as per her statement, she had already been given some injections. Process for termination of pregnancy had already started. One Neetu Singh was in the process of giving glucose. The empty strips of Misoprostol tablets, which are used in the process to end a pregnancy, were found lying in the dustbin. The OPD register revealed the entry in the name of Ruman on 07.02.2021, thus corroborating her version. It is only

during that process that raiding team, after recording statement of Ruman, took her to the Civil Hospital, where termination of her pregnancy was completed. Learned State counsel submits that in these circumstances, the provisions of Sections 3, 4 and 5 of the MPT Act are clearly applicable. Prayer is made of dismissal of the petition.

5. I have considered submission of both the sides and have appraised the record carefully.

6. Medical Termination of Pregnancy Act, 1971 was enacted to provide for termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. Medical Termination of Pregnancy Rules, 2003 [in short 'Rules, 2003'] have been made to carry out the provisions of the MTP Act, 1971. Sections 3, 4 and 5 of the MTP Act are the relevant provisions for the purpose of this case. The relevant portion of the provisions is read as under:

“3. When pregnancies may be terminated by registered medical practitioners.

—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) to (4) xxxxxxxxxxxx (not relevant)

4. Place where pregnancy may be terminated.*—No termination of pregnancy shall be made in accordance with this Act at any place other than—*

(a) a hospital established or maintained by Government, or (b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

5. Sections 3 and 4 when not to apply.—(1) xxxxxxxxxxxx (not relevant)

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

7. As the bare reading of above provisions would reveal, Section 3 of the Act simply deals with as to when the pregnancies may be terminated by registered medical practitioners; whereas Section 4 provides for the place, where pregnancy may be terminated. Section 5 provides for the punishment in certain eventualities. It is only the registered medical practitioner, who is permitted to carry out the termination of pregnancy in certain situations and that too in accordance with the provisions of the Act.

8. It is the specific case of the respondent State that petitioner is not authorised for termination of pregnancy as per Rules, 2003. Petitioner does not deny the said fact nor claims to be the registered medical practitioner. Her stand is that though she is a medical professional for last 20 years and has performed more than 1800 normal deliveries but has not committed any offence under MTP act, as she did not carry out the

termination of pregnancy in this case. Ld. Counsel for the petitioner refers to Section 2 (e) of the Act to contend that when the raid was conducted, the woman Ruman was simply lying on the bed for checkup and that nothing was done qua termination of her pregnancy. She was transferred to the Civil Hospital, where procedure of termination of her pregnancy was conducted.

9. Section 2(e) of the Act reads as under:-

(e) "termination of pregnancy" means a procedure to terminate a pregnancy by using medical or surgical methods."

10. It is argued by Ld. Counsel for the petitioner that in present case, no procedure to terminate the pregnancy was carried out and so, provisions of MTP, Act cannot be invoked.

11. As the meaning of "*Termination of pregnancy*" would reveal, it is the procedure to terminate a pregnancy by using either medical or surgical methods, and not the culmination of the procedure. A "procedure" generally refers to a series of steps or actions taken to accomplish a particular task or achieve a specific result. In the context of "termination of pregnancy," the term "procedure" refers to the medical or surgical steps undertaken to end the pregnancy intentionally. In the case of abortion, the specific procedure can vary and may involve either a medical abortion using medication or a surgical abortion, each with its own set of steps and considerations. Overall, a procedure is a systematic and organized set of actions designed to achieve a particular goal.

12. In the present case, as per the evidence collected by the respondent state, petitioner had already started the process to terminate the pregnancy of pregnant woman Ruman, by injecting the injectables on 07.02.2021 and by inserting two tablets in her body parts (vagina). Said fact was confirmed by ultrasound report of Ruman got conducted at Bharat Ultrasound Centre, Narwana on 10.02.2021, which gave the impression that there was single G Sac with fetal node without cardiac activity in endocervical canal, suggestive of miscarriage in process. So much so, on 10.02.2021, when the raid was conducted, two injections of misoprostol had already been given to Ruman and the strips thereof were found from the dustbin lying in the labour room. The pregnant woman Ruman was found lying on the table at that time. The contention of learned counsel for the petitioner that the misoprostol is used at the time of delivery and so no inference against the petitioner can be drawn, has no merit because no doubt, misoprostol is also used for inducing labour pain at the time of delivery, but in the present case, there can be no question of using of misoprostol to Ruman for the purpose of inducing labour pain as she was having fetus of only 07 weeks at the relevant time. So *prima facie* the only inference that can be drawn is that misoprostol injection was given to end the pregnancy. Thus, process to terminate the pregnancy of the pregnant woman Ruman had already started, within the meaning of Section 2 (e) of the MTP Act.

13.1 Learned counsel for the petitioner has referred to “**Dr. Vandana Malik v. State of Haryana**”, *Law Finder Doc Id # 649930*. In that case, during raid conducted by a team of doctors, various equipments used for termination of pregnancy were found from the labour room of Malik Hospital, Samalkha being run by petitioner – Dr. Vandana Malik. The said hospital was not found to be a place approved for the purpose of MTP Act by the Government. The FIR was registered. During investigation, no evidence was collected to the effect that petitioner – Dr. Vandana Malik had conducted termination of any pregnancy.

13.2 In the aforesaid facts & circumstances, it was held by this Court that no person could be held guilty for committing of an offence on the basis of assumption and presumption and that there was nothing on record suggestive of the fact that instruments found during raid were not used for conducting any delivery or any other medical procedure, much less used only for termination of pregnancy.

13.3 The facts of the aforesaid authority are clearly distinguishable from the present case, inasmuch as in the present case, petitioner had already started the process to terminate the pregnancy as has been noticed above and so, the view taken by this Court in ***Vandana Malik’s case (supra)*** is not applicable to the facts of the present case.

14.1 Learned counsel for the petitioner has further referred to ***“Kamal Vasudeva and another v. State of Haryana”, (CRM-M-34689 of 2016, decided on 02.08.2019).*** In that case, the only allegations against the petitioner were that a decoy customer was sent by a raiding team headed by the Deputy Civil Surgeon, Hisar, who purchased MTP kit from the shop of the petitioner and that on getting the signal, after the decoy customer got the MTP kit, petitioner was caught red handed along with currency notes given for MTP kit. It was in these facts that this Court held that no offence under the MTP Act was made out.

14.2 Clearly the fact of the aforesaid case are distinguishable from this case, as it was not a case of termination of pregnancy and rather, it was a simple case of selling of the MTP kit.

15.1 Learned counsel has lastly relied upon ***“Abhilasha Garg & Anr v. Appropriate Authority (PNDT ACT) DC (EAST) AND ORS” Law Finder Doc ID # 219422.*** In that case, a decoy patient was sent to the clinic of petitioner - Dr. Abhilasha Garg. The said decoy patient was told by the petitioner that she had to get a 14 weeks fetus of a female child of her sister aborted. Allegation was that petitioner – Dr. Abhilasha Garg knowingly and deliberately not only accepted to do the abortion of the said fetus of 14 weeks, but also advised to come as immediately as possible and suggested the decoy that she will charge an amount of ₹4,000/- and an amount of ₹500/- was taken by her in advance.

15.2 It was in the aforesaid facts and circumstances that Delhi High Court, after taking note of the provisions of Section 3 of the MTP Act held as under:-

“51. The so-called sting operation is supposed to have shown the Petitioner No. 1 agreeing to perform an abortion of a 14 weeks’ old female foetus. Clearly she did not perform the abortion itself. The mere agreement to do an act which may constitute a violation of Section 3(2) is by itself not punishable even under the MTP Act as amended in 2002. There has to be an actual act of terminating of the pregnancy and not an agreement to terminate such pregnancy.”

15.3 As it will clear from the facts and circumstances of **Abhilasha Garg’s case (supra)**, in that case, Dr. Abhilasha Garg had only agreed to perform abortion of 14 weeks old fetus. She had not performed the abortion herself. It was in all these circumstances that the Delhi High Court held that mere agreement to do an act, which may constitute violation of Section 3(2) was not punishable even under the MTP Act as amended in 2002 and that there has to be an actual act of terminating of pregnancy and not an agreement to terminate such pregnancy.

15.4 Again the facts of the above-cited authority are distinguishable from the facts of the present case. It has already been noticed in the present case that petitioner had already started the process to terminate the pregnancy.

16. Having regard to the aforesaid discussion of all the facts and circumstances of the case, this Court does not find the present case to be a fit case for quashing of the FIR or consequential proceedings arising therefrom.

Dismissed.

February 26, 2024

Sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking:

Whether reportable:

Yes/No

Yes/No