

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2024:PHHC:096506-DB



Civil Writ Petition No. 2066 of 2018 (O&M)

Date of Decision: 30.07.2024

National Anti Crime and Human Rights Protection of India

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL, JUDGE

Present : Ms. Molly A.Lakhanpal, Advocate, for the petitioner.
Mr. Saurav Khurana, Addl. Advocate General, Punjab.
Mr. Naveen S.Bhardwaj, Addl. Advocate General, Haryana.
Mr. Arun Kumar, Advocate for
Mr. Suvir Sidhu, Advocate, for respondent No.15.

SHEEL NAGU, CHIEF JUSTICE (Oral)

This petition has been filed in public interest by a trust, namely, National Anti Crime & Human Rights Protection of India raising public cause with regard to gross violation of the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.

2. The facts reveal that on 28.11.2017 a team of Doctors visited respondent No.15, a hospital for inspection but the said team was not allowed to enter the premises of the hospital and were not even shown the relevant documents as well as the machines installed therein. Since the lift was shown to be non-operational, the said team could not reach the first floor of the hospital. As a result, a complaint was made to the concerned Sub Divisional Magistrate on 28.11.2017, by the said team of Doctors that they were prevented from inspecting the hospital and were also illegally detained physically by restraining them from exercising their duties under the

provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.

3. Reply on behalf of respondents No.1, 3 and 5 to 7 has been filed in Court and the same is taken on record. The said reply reveals that three FIRs i.e. FIR No. 163 dated 26.08.2016, FIR No. 97 dated 14.05.2017 and FIR No. 65 dated 06.04.2018 have been registered against respondent No.15-hospital under the various provisions of the Indian Medical Council Act and Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 as well as under the Indian Penal Code, 1860 at Police Station City Kharar, District SAS Nagar.

4. However, in regard to the complaint dated 28.11.2017, in para-7 of the aforesaid reply, it has been stated that the said complaint was thoroughly enquired into but no evidence was found in support of the allegations made therein and therefore, the matter was closed without lodging any FIR.

5. It is surprising to note that from the complaint dated 28.11.2017 made by the said team of the Doctors, a prima-facie case for wrongfully restraining the team of Doctors and also restraining them from doing their official duties was made out and both these offences are punishable under Sections 341 and 353 of the Indian Penal Code, 1860 but despite disclosing commission of cognizable offences, the police did not register an FIR. The law on this point is clear in terms of judgment rendered by Constitution Bench of Apex Court in *Lalita Kumari vs. State of U.P. (2014) 2 SCC 1*, wherein it has been categorically held that once the information/complaint reveals commission of cognizable offence, registration of an FIR is mandatory. However, the Constitution Bench of the Apex Court has made certain exceptions to the extent that police can conduct enquiry before registration of FIR but only to ascertain whether cognizable offence has been committed or not especially in complicated offences and special offences etc.

6. However, in the present case, neither the offence was special nor involved moral turpitude/complicated questions of fact, therefore, the police was obliged to register an FIR, which, however, was not done.

7. Learned State counsel appearing for the respondent-State of Punjab on instructions submits that the premises of respondent No.15 have since been sealed.

8. In view of the above, it would be appropriate to dispose of the present petition with the following directions:-

- i) State of Punjab is directed to ensure that whenever a complaint is made which reflects commission of cognizable offence, an FIR ought to be registered in terms of the law laid down by the Apex Court in *Lalita Kumari’s case (supra)*.
- ii) The provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 be followed in its letter and spirit.

(SHEEL NAGU)
CHIEF JUSTICE

(ANIL KSHETARPAL)
JUDGE

30.07.2024

ravinder

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