



**THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-38654-2022

Reserved on : 02.05.2024

Pronounced on: 09.05.2024

Dr. Seema Sethi and another

.....Petitioners

Versus

District Appropriate Authority (PC & PNDT) Fatehabad

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. S.S. Narula, Advocate for the petitioners.

Ms. Deepshikha Chauhan, AAG, Haryana.

MANJARI NEHRU KAUL, J.

1. The petitioners are seeking quashing of Complaint No.51 of 2021 dated 09.07.2021 titled as 'District Appropriate Authority, PC-PNDT, Fatehabad Vs. Dr. Seema Sethi etc.' under Section 28 read with Sections 3, 5, 6, 23 and 25 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'PCPNDT Act') and Sections 420, 120-B of the IPC along with all subsequent proceedings arising therefrom including order dated 05.08.2022 passed by SDJM, Tohana (Annexure P-2) whereby the petitioners and others have been summoned to face trial.

Submissions of learned counsel for the petitioners

2. Learned counsel appearing for the petitioners submits that the complaint in question (Annexure P-1) as well as the summoning



CRM-M-38654-2022

order (Annexure P-2) deserve to be quashed primarily on the following grounds:-

2 (i). that upon a bare reading of the summoning order (Annexure P-2) it is discernible that it had been passed in a mechanical manner without any application of mind by the learned Trial Court. While referring to the ratio of law laid down by Hon'ble the Supreme Court in *M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate : 1997(4) RCR (Criminal) 761 and Sunil Bharti Mittal Vs. Central Bureau of Investigation : 2015(2) RCR (Criminal) 1*, learned counsel has argued that summoning of an accused in a criminal case is a serious matter and thus, if at all the petitioners ought to have been summoned, the order passed should have been a detailed and well reasoned one, which however, was not the case. Furthermore, even if the allegations levelled in the complaint are considered at their face value, they do not prima facie constitute any offence under the PCPNDT Act and rather amount to an abuse of the legal process;

2 (ii). that while drawing the attention of this Court to the allegations levelled against both of the petitioners, Ld Counsel has asserted that as far as petitioner No.1-Dr. Seema Sethi is concerned, she has been accused of revealing the gender of the foetus to Rajwinder Kaur (decoy pregnant patient, whose original name is Krishna Devi), after conducting an ultrasound examination upon her, whereas on the other hand, petitioner No.2-Sunil Sethi has been implicated in the complaint only because he was the owner of Sethi Hospital and Maternity Home (hereinafter referred to as 'Hospital') where the said



CRM-M-38654-2022

ultrasound examination was allegedly carried out. Learned counsel has vehemently argued that apart from being the owner of the Hospital, no role much less by way of a whisper had been attributed to petitioner No.2-Sunil Sethi in the complaint. In support, he has drawn the attention of this Court to the Complaint, annexed as Annexure P-1;

2 (iii). that while highlighting the apparent malafides of the complainant in filing the instant complaint, learned counsel submits that it was a matter of record that previously an FIR dated 26.07.2018 under Sections 3, 5 and 6 of the Medical Termination of Pregnancy Act, 1971, Sections 23 and 27 of the PCPNDT Act and Section 420 of the IPC, was registered with respect to the same occurrence; following a detailed investigation, a final report (Annexure P-15) was presented on 26.10.2018 wherein petitioner No.1 had been declared innocent while petitioner No.2 had not even been named in the FIR in question and challan had been presented only against Rekha Rani and Deep Singh. However, a bare perusal of the instant Complaint reveals that the complainant i.e. District Appropriate Authority (hereinafter referred to as 'DAA'), while filing the present complaint conspicuously refrained from disclosing the registration of the aforementioned FIR and the challan not having been presented against the petitioners;

2 (iv). that after the registration of the aforementioned FIR, licence of the ultrasound centre of the petitioners was suspended by the respondent for a year with effect from 26.07.2018, and all the machines were sealed (Annexure P-13); the malafides of the complainant in lodging the instant complaint were writ large from the fact that it was



CRM-M-38654-2022

only after the petitioner moved the appropriate authorities against the suspension of his licence by the DAA, that the DAA filed the instant Complaint and that too after a staggering delay of 02 years and 11 months. In addition, there was absence of any direct evidence or material on record to conclusively link the petitioners to the alleged offences.

Submissions of learned State counsel

3. Per contra, learned State counsel while vehemently opposing the prayer and submissions made by the counsel opposite, has submitted as under:-

3 (i). that the impugned order vide which the petitioners have been summoned is flawless and does not deserve to be set aside. She has emphasized that at the stage of summoning, only the evidence gathered is required to be considered. Learned State counsel has, therefore, asserted that there is ample evidence on record to justify proceeding against both the accused petitioners under PCPNDT Act;

3 (ii). that there is also ample documentary evidence in the form of CCTV footage wherein petitioner No.1-Dr. Seema Sethi is clearly visible conducting ultrasound examination on the pregnant decoy patient within the premises of the Hospital, while the presence of co-accused Rekha Rani is also visible, inside the ultrasound room;

3 (iii). that since the ultrasound upon the decoy pregnant woman was performed in the Hospital owned by petitioner No.2, his collusion in the crime in question is clearly discernible. Furthermore, the



CRM-M-38654-2022

undeniable confirmation that petitioner No.1-Dr. Seema Sethi disclosed the gender of the foetus as female to the decoy pregnant woman, is corroborated by the subsequent birth of a female child by the decoy pregnant woman;

3 (iv). That there was no question of any malicious prosecution of the petitioners, as the raiding party was constituted by the Civil Surgeon-cum-DAA, Fatehabad pursuant to a tip off that illegal sex determination tests were being carried out by petitioner No.1-Dr. Seema Sethi in the Hospital; furthermore, the complaint was filed within the stipulated limitation period of three years;

3 (v). that no doubt an FIR pertaining to the incident in question was registered against petitioner No.1 and other co-accused, however, merely because petitioner No.1 was not challaned in the said FIR would not absolve the accused of their culpability under the PCPNDT Act as the FIR was registered only for offences under Sections 420 of the IPC, further as per Section 28 of the PCPNDT Act, a joint investigation involving both the DAA and the police was required to be carried out which was not done while lodging the aforementioned FIR. Subsequently, after fulfilling the requirements of Section 28 of the PCPNDT Act, a joint investigation was carried out, leading to the filing of the current complaint against the petitioners under the PCPNDT Act;

3 (vi). that admittedly the respondent initially did not renew the registration of the Hospital due to pending criminal complaints, however, subsequently the registration had been renewed with its validity until 30.09.2026; there was no connection between the renewal



CRM-M-38654-2022

of licence of the Hospital of the petitioner and filing of the instant complaint, rather there was ample incriminating evidence to show the culpability of the petitioners in the sex determination test carried out in the Hospital; hence, in the circumstances the Ld. Trial court had rightly summoned the petitioners vide the impugned order.

4. I have heard learned counsel for the parties and perused the relevant material on record.

FINDINGS OF THE COURT

5. The allegations levelled in the complaint in question, may be summed up as thus: Dr. Manish Bansal, the then Civil Surgeon, Fatehabad, received secret information about illegal abortion and sex determination tests being carried out in the district, allegedly orchestrated by a gang operating from Punjab, which was particularly active in Tohana. Rekha Rani, wife of Deep Singh, purportedly was a major player in this sex determination racket, who had been arranging sex determination procedures at the Hospital in Tohana for a fee. Acting on secret information, Dr. Manish Bansal, directed Dr. Girish Kumar, District Nodal Officer, PCPNDT, Fatehabad, to verify the authenticity of the secret information received. A sting operation was planned after involving a decoy pregnant woman, Krishna Devi (impersonated as Rajwinder Kaur), who volunteered to participate under the *Beti Bachao Beti Padhao Scheme*. Thereafter, a team was constituted to carry out the raid in question in the Hospital.

6. The decoy pregnant woman accompanied by Kuldeep Kaur and Kuldeep Singh, rendezvoused with Rekha Rani in Tohana, where a



CRM-M-38654-2022

deal for sex determination was struck. Subsequently, at Sethi Hospital and Maternity Home, Tohana, petitioner No.1-Dr. Seema Sethi conducted the ultrasound, allegedly disclosing the gender of the foetus to Rekha Rani. The decoy pregnant woman was informed that she was carrying a female foetus. Upon leaving the Hospital, Rekha Rani and the decoy were intercepted by the raiding team leading to the arrest of Rekha Rani.

7. During investigation, CCTV footage of the Hospital was retrieved wherein petitioner No.1-Dr. Seema Sethi and co-accused Rekha Rani were visible interacting with each other. Marked currency notes provided to the decoy pregnant woman, matching those provided by Dr. Manish Bansal were also recovered from accused Rekha Rani, along with additional cash. Statements of all the concerned persons were recorded and all the other relevant documents were prepared at the spot in support of the sting operation carried out by the raiding party.

8. Learned counsel for the petitioners vehemently asserted that qua petitioner No.1-Dr. Seema Sethi there was absence of any specific allegations in the complaint that she had disclosed the sex of the foetus during the ultrasound examination conducted by her upon the decoy pregnant woman; instead it was contended that if at all, it was co-accused Rekha rani who may have revealed the sex of the foetus to the decoy pregnant woman, hence, there had been no violation of the PCPNDT Act by petitioner No.1-Dr. Seema Sethi.

9. While considering a plea for quashing of a complaint under Section 482 of the Cr.P.C., this Court must exercise its inherent powers

**CRM-M-38654-2022**

judiciously and cautiously. The Court must proceed with great care, recognizing that allowing such prayer for quashing of a complaint/FIR could prematurely stifle prosecution, denying it the opportunity to lead evidence. Therefore, at this juncture, while exercising its inherent jurisdiction under Section 482 of the Cr.P.C., focus of the Court should be solely on determining whether a prima face case exists, based on a reading of the allegations levelled in the complaint. Court is required only to ascertain if the allegations levelled outline the commission of a cognizable offence or not, against the accused who is seeking quashing of a complaint/FIR. It needs to be asserted that the defence of an accused, regardless of its strength, cannot be entertained or evaluated by this Court while exercising its powers under Section 482 of the Cr.P.C.

10. In the present case, the petitioners have allegedly committed offences under Sections 3, 5, 6, 23 and 25 of the PCPNDT Act. Section 5 of the PCPNDT Act delineates the pre-requisites for conducting pre-natal diagnostic procedures. It mandates thorough explanation of all known side-effects and after-effects of the procedures, to the pregnant woman, along with obtaining her written consent in a language she understands, using the prescribed form. Furthermore and most importantly, Sub-Section 2 of Section 5 of the PCPNDT Act explicitly prohibits communication of the sex of the foetus to the pregnant woman, her relatives or any other person, by any means.



CRM-M-38654-2022

-9-

11. Section 6 of the PCPNDT Act addresses the prohibition on determining the sex of a foetus, encompassing various entities and individuals. Similarly, Section 23 of the PCPNDT Act outlines the penalties for violations, including imprisonment and fines, while ensuring protection of victims coerced into undergoing such procedures. For facility of reference Sections 5, 6 and 23 of the PCPNDT Act are reproduced hereinbelow:-

“5. Written consent of pregnant woman and prohibition of communicating the sex of foetus.—

(1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless—

(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;

(b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and

(c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs, or in any other manner.

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.

XXX

XXX

XXX



CRM-M-38654-2022

XXX XXX XXX

23. Offences and penalties.—

(1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees. (2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence. (3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for the purposes other than those specified in sub-section (2) of section 4, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees. (4) For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.”

12. A careful analysis of the legal provisions makes it abundantly clear that disclosure of the sex of a foetus to anyone including the pregnant woman is an offence under the PCPNDT Act qua which cognizance can be taken by a Court under Section 28 of the



CRM-M-38654-2022

-11-

PCPNDT Act. The offence encompasses communication through various means, indicating the intent of the legislature to penalize any actions revealing sexual identity of the foetus to any person. In the present case, there are specific and direct allegations levelled against petitioner No.1-Seema Sethi, a doctor, of disclosing sex of the foetus to co-accused Rekha Rani, prima facie supported by CCTV footage retrieved from the Hospital. Allegedly in the CCTV footage, both petitioner No.1-Dr. Seema Sethi and co-accused Rekha Rani are visible interacting with each other through gestures and words, while the ultrasound was being conducted upon the decoy pregnant woman, and that too by none other than petitioner No.1-Dr. Seema Sethi. Hence, in the circumstances, the contention of the learned counsel qua petitioner No.1-Dr. Seema Sethi stands negated as the complaint in question, prima facie reveals the commission of offences alleged, against petitioner No.1-Dr. Seema Sethi.

13. Coming to petitioner No.2-Sunil Sethi, this Court finds substance in the contentions of the learned counsel for the petitioner; a perusal of the complaint reveals that no allegation, direct or indirect, much less by way of a whisper, has been levelled against him in the complaint in question. He has been implicated in the complaint in question solely being the owner of the Hospital; ownership of the Hospital where the ultrasound was allegedly carried upon a decoy pregnant woman would not make him liable under the PCPNDT Act. It has not been alleged in the complaint that petitioner No.2-Sunil Sethi either disclosed the sex of foetus to any individual, including the



CRM-M-38654-2022

pregnant decoy woman nor has it been alleged that he, in any manner facilitated the visit of the decoy pregnant woman to his hospital. Furthermore, it is not even the case of the prosecution that when the alleged sex determination test was carried out by petitioner No.1-Seema Sethi upon the decoy pregnant woman, petitioner No.2-Sunil Sethi was present during the said procedure or was even present in the vicinity of the Hospital. It is not even alleged that the said procedure of sex determination of the foetus upon the pregnant decoy woman had been carried out under the directions of petitioner No.2-Sunil Sethi. It must be emphasized that summoning an accused to face a criminal trial is a grave matter with significant ramifications, and it should not be set into motion in a perfunctory manner. At the very least, the allegations in the complaint should demonstrate the commission of a cognizable offence by the accused in question. However, in the present case, this Court has no hesitation to hold that any such evidence against petitioner No.2-Sunil Sethi is conspicuously absent.

14. As a sequel to the above, while petitioner No.1-Dr. Seema Sethi's involvement in the alleged offence, is prima facie supported by the material on record, collected by the investigating agency, however, as far as petitioner No.2-Sunil Sethi is concerned, there is lack of any such incriminating material against him. Accordingly, the instant petition is dismissed qua petitioner No.1-Dr. Seema Sethi and is allowed qua petitioner No.2-Sunil Sethi.

15. The petition stands disposed of in the above terms.

CRM-M-38654-2022

16. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

09.05.2024

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No