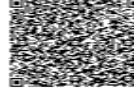


2024:PHHC:163111



121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34977-2024
DECIDED ON: 15.10.2024

SHASHI BALA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. J.S. Johal, Advocate, for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J

1. **Relief Sought:**

The jurisdiction of this Court has been invoked under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') seeking quashing of FIR No. 240, dated 20.09.2022 (Annexure P-1), under Sections 23 & 29 of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'Act') and Sections 109 and 120-B of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station City Hoshiarpur, Hoshiarpur along-with all consequential proceedings arising therefrom including Final report dated 15.03.2023 (Annexure P-2) as well as order dated 20.12.2023 (Annexure P-4) whereby, charges have been framed under Sections 109 and 120-B IPC and Sections 23 and 29 of the Act.

2. **Facts:**

The present FIR came to be registered as a consequence of an

alleged decoy operation undertaken on the premises of Shashi Nursing Home, which is being run by the petitioner, by a team comprising of officials of the State of Haryana on 19.10.2022. Subsequent to the above decoy operation, the present FIR came to be registered on the basis of complaint moved by respondent No.2-District Appropriate Authority, Chairman PC & PNDT Act-cum-Civil Surgeon, Hoshiarpur to the Station House Officer, Police Station City Hoshiarpur, Hoshiarpur wherein, the allegation was that the petitioner performed ultrasonography on the decoy pregnant woman and disclosed the gender of her child.

After filing of challan, the charges were framed under Sections 109 and 120-B IPC and Sections 23 and 29 of the Act.

3. **Submissions:-**

On behalf of the petitioner:

Learned counsel for the petitioner has contended that under the provisions of the PC & PNDT Act on filing a complaint by a Appropriate Authority notified under Section 17 of the Act, the cognizance can be taken by the Court under Section 28 of the said Act. The complaint has not been defined in the said Act but it is defined in Section 2 (d) of the Code of Criminal Procedure whereby, it ought to be either oral or writing before the Magistrate and would not include in the Police report. In such circumstances, the trial Court cannot take cognizance for the offences under PC and PNDT Act and to frame the charge for the said offences based on police report.

The petitioner asserts that during the alleged decoy operation, no money was recovered from her or her staff, contradicting claims made in the FIR. Furthermore, it is noted that a sum of Rs. 13,000 was recovered from an individual named Manjeet Kaur, who is unrelated to the petitioner and

allegedly entered the premises with the decoy team. The petitioner provided various hospital records, including OPD registers and ultrasound records, which were reviewed but did not yield any incriminating material against her. This suggests a lack of evidence linking her to any wrongdoing. The CCTV footage from the premises reportedly shows that the petitioner did not engage in any illegal activities during the time of the operation, further supporting her claim of innocence. It is highlighted that both an Executive Magistrate and police officials were present during the operation, yet no action was taken against the petitioner at that time. This absence of immediate legal proceedings could indicate a lack of substantial evidence to warrant such actions.

The legality of the search operation itself has been called into question. It has been argued that proper authorization for the raid was not obtained as required by law, which could render any evidence collected during the search inadmissible in court.

3. **On behalf of respondent-State:**

The learned State counsel has detailed the events surrounding a raid conducted in the hospital of the petitioner, which was initiated based on a complaint from Dr. Amarjit Singh, the Civil Surgeon of Hoshiarpur. A decoy, posing as a pregnant woman, was sent to the scanning center of the petitioner by an intermediary named Manjeet Kaur. During this visit, a fee of ₹25,000 was demanded and subsequently paid for determining the sex of the foetus. Following the completion of the scan, law enforcement entered the hospital premises. They conducted searches in the room of the petitioner as well in the scanning room where the procedure took place. A portion of the payment was recovered from Manjeet Kaur during this operation. The petitioner has been

charged with offences outlined in the First Information Report (FIR) related to this incident. The trial court framed charges against the petitioner and others on December 20, 2023, and the case is pending for decision.

It is argued by learned State counsel that the FIR was appropriately registered based on the application of Dr. Amarjit Singh, asserting that the trial court has jurisdiction over this matter. The prosecution maintains that sufficient evidence exists to substantiate the charges against the petitioner.

Given these circumstances, it is contended that the petition filed by the petitioner is liable to be dismissed, as all procedural requirements for initiating legal action have been met and there is a legitimate basis for proceeding with the case in court.

No other argument has been raised by either of the parties.

Heard learned counsel for the respective parties.

4. Analysis:

The registration of offences under Sections 23 and 29 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) involves specific procedural requirements, particularly regarding the role of the Appropriate Authority as defined in Section 17 of the Act. The Appropriate Authority is empowered to file complaints for violations under the PC & PNDT Act. This authority is designated by the state government and is responsible for ensuring compliance with the Act's provisions, which aim to prohibit sex selection and regulate pre-natal diagnostic techniques.

According to Section 28(1) of the PC & PNDT Act, a complaint can only be filed by the Appropriate Authority or an officer authorized by the

Central or State Government; A person who has provided a prior notice of at least 15 days to the Appropriate Authority regarding the alleged offence. This means that without a complaint from an authorized individual or body, courts cannot take cognizance of offences under this Act.

The legal interpretation of complaints under the Pre-Conception and Pre-Natal Diagnostic Techniques (PC & PNDT) Act, 1994, emphasizes that a complaint, as defined in Section 2(d) of the Code of Criminal Procedure (CrPC), is distinct from a police report. A complaint can be made orally or in writing to a Magistrate to initiate action regarding an alleged offense, but it explicitly excludes police reports. Under Section 28 of the PC & PNDT Act, cognizance of offenses can only be taken by a court based on a complaint filed by the Appropriate Authority or its representative on behalf of the Central or State Government. This provision indicates that the court's ability to take cognizance is contingent upon receiving a formal complaint rather than relying on police investigations or reports.

In the context of the current case, it appears that on the basis of a complaint moved by Civil Surgeon to the SHO, FIR under Sections 109 & 120-B IPC and Sections 23 and 29 of PC & PNDT Act stands registered. However, this sequence of events does not constitute a formal complaint as required for the court to take cognizance under Section 28 of the Act. Consequently, if the initial action was based solely on police directives rather than a legitimate complaint from the Appropriate Authority, then any subsequent charges framed under the Act is deemed unwarranted.

Moreover the view of this Court is supported by a judgment of Division Bench of this Court in *Hardeep Singh & Another Vs. State of Haryana and others bearing CRM-M-4211-2014*, wherein it has been

observed as under:-

“(1) FIR for the offence committed under the Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.

(2) A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.”

Thus, it is clear that for a court to properly take cognizance of an offence under the PC & PNDT Act, there must be a valid complaint filed by the Appropriate Authority. The reliance on inspection reports or police directives without there being any such complaint undermines the legal foundation necessary for prosecuting offences under this specific legislation, moreover, the prosecution has failed to present any incriminating evidence against the petitioner concerning Sections 109 and 120-B of the IPC, which would indicate that she has either abetted someone or participated in a criminal conspiracy.

In view of the afore-said discussions as well as the judicial pronouncements, this Court is of the considered view that the impugned FIR is nothing but an abuse of process of law and is liable to be quashed. Hence, the impugned FIR 240, dated 20.09.2022 (Annexure P-1), under Sections 23 & 29 of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short ‘Act’) and Sections 109 and 120-B of the Indian Penal Code, 1860 (for short ‘IPC’), registered at Police Station City Hoshiarpur, Hoshiarpur along-with all consequential proceedings arising therefrom including Final report dated 15.03.2023 (Annexure P-2) as well as

order dated 20.12.2023 (Annexure P-4) whereby, charges have been framed under Sections 109 and 120-B IPC and Sections 23 and 29 of the Act are hereby quashed.

In the afore-said terms, the present petition is allowed.

15.10.2024

(SANDEEP MOUDGIL)
JUDGE

Sham
Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*