

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52858-2022 (O&M)

Date of Decision: 24.07.2024

Dr. Naresh Kumar Garg

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vinod Ghai, Sr.Advocate with
Mr. Arnav Ghai, Advocate (CRM-M-52858-2022)
Mr. Mohd. Yousaf, Advocate (CRM-M-20892-2023)
for the petitioner(s)
Mr. BS Virk, Sr.DAG Haryana

Sandeep Moudgil, J.

(1). This order shall dispose of CRM-M-52858-2022 and CRM-M-20892-2023 as common issues are involved. CRM-M-52858-2022 is treated as the lead case.

(2). This petition under Sections 482 CrPC has been filed by the petitioners seeking quashing of the complaint No.COMA/116/2018 dated 19.09.2018 under Sections 4,5,6,29 and Rule 9&10 of Preconception and Prenatal Diagnostics Techniques Act, (Annexure P11) and the summoning order dated 12.09.2022 passed by CJM, Gurugram and all consequential proceedings.

(3). Learned counsel for the petitioner submits that as per the FIR, Dr. Abdul Kadir demanded Rs.25,000/- from the shadow witness for conducting sex determination test on decoy patient and the role of the petitioner was that he conducted the ultrasound of the decoy patient and there were some discrepancies in the record. He contends that even as per the raiding team, the petitioner had neither disclosed the sex of the foetus nor he demanded any money and for this reason the petitioner was discharged in the FIR.

(4). It is argued that as per Section 28 of the PCPNDT Act, cognizance of any offence can only be taken on the complaint filed by the Appropriate Authority authorized by the Central or State Government, as defined under Section 17 of the Act and in the present case, the impugned complaint has been presented by Deputy Civil Surgeon-cum-PNDT, Nodal Officer, whereas as per notification dated 17.11.2013 issued by the Health Department, Haryana, the Appropriate Authority shall consist of the Civil Surgeon, District Programme Officer, Women and Child Development Department and the District Attorney. Reliance has been placed on a judgment of the Coordinate Bench of this Court in **Ishwar Singh Yadav vs. State of Haryana & Ors. (CWP No.11171 of 2015)** decided on 02.11.2017, wherein it has been held that the District Appropriate Authority cannot delegate its powers to any other authority, who, in the present case, is the Deputy Civil Surgeon-cum-PNDT Nodal Officer.

(5). Learned State counsel, on the other hand, submits that the petitioner has committed violation of the provisions of the PCPNDT Act as he along with Dr. Abdul Kadir were found to have committed violation of the provisions of the Act as they have not maintained Form-F and other required record as per Rule 9 & 10 under the Rules for which the petitioner is equally liable to be penalized. Reliance has been placed on **Federation of Obstetrics and Gynecological Societies of India vs. Union of India & Ors., (2019) 6 SCC 283**, wherein the Supreme Court held that deficiency in maintenance of record as prescribed, would be considered as violation of the PCPNDT Act.

(6). Further, as can be seen from the averments of the reply filed by the respondents that under the PCPNDT Act, all complaints and matter related to implementation of the Act, has to be put before District Advisory Committee

(DAC), who in turn further recommend to District Appropriate Authority (DAA) to initiate further action. In the present case, the DAA has implemented the recommendation of DAC under Section 17 of the Act. Besides, the DAA under Rule 18-A of the Rules has authorized Dr. Chitranjan, Deputy Civil Surgeon for filing of the instant complaint and therefore, the complaint filed by the Deputy Civil Surgeon cannot be said to be filed in contravention of the provision of the Act as per authorization given to him on 17.09.2018 (Annexure P10).

(7). In view of the above discussion, there is no merit in the present petition and the same is accordingly dismissed.

24.07.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No