



2024:DHC:9900



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 4th December, 2024**

+ CRL.M.C. 3563/2024

DR SONIA D NARANG

.....Petitioner

Through: Appearance not given

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Satish Kumar, APP with SI Tej
Dutt
Mr. Pramod Kant Saxena, Advocate
for D6/Bank of Maharashtra Mobile

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") [earlier Section 482 of the Code of Criminal Procedure, 1973(hereinafter "CrPC")] has been filed on behalf of the petitioner seeking the following reliefs:

"a) Pass an order for quashing of First Information, bearing No. 0516, dated 23.08.2020, Under Section 4/5/6/23 of the PC & PNDT Act, 1994 at Police Station Hari Nagar (West), New Delhi - 110058.

b) Pass such other order/orders which this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interest of justice."

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2. The brief facts of the case are that on 22nd August, 2020, a raid/decoy operation was conducted at M/s Perfect Ultrasound Centre & Diagnostic Lab, G-55, Street No. 11, Hari Nagar, New Delhi. In the said operation, it is alleged that an ultrasound was conducted by the petitioner on a decoy patient and the disclosure of sex of the fetus was made by one Mr. Mohit, who was an employee at the said lab.
3. Pursuant to the said operation, the authorities sealed the lab and seized the ultrasound machine in addition to other equipments at the lab. Thereafter, an FIR was registered at the Police Station - Hari Nagar (West), New Delhi under Sections 4/5/6/23 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter “PC & PNDT Act”), pursuant to which the petitioner was arrested and was later granted bail *vide* Order dated 25th August, 2020 by the Duty Metropolitan Magistrate, Tis Hazari Court, Delhi. Aggrieved by the instant FIR, the petitioner has filed the present petition before this Court seeking quashing of the instant FIR.
4. Learned counsel appearing for the petitioner submitted that the District Appropriate Authority of PC & PNDT Act *vide* personal hearing order dated 11th December, 2020 has found the petitioner not guilty and that no legal proceedings can be contemplated against the petitioner at this stage.
5. It is submitted that the said lab has been de-sealed and the seized machines therein have also been released *vide* order dated 19th March, 2021 passed by the learned Trial Court.
6. It is submitted that the chargesheet has not been filed by the police yet



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despite passing off a long time of over three years despite being in possession of all the evidence related to the case, which suggests that there is no case that can be made out against the petitioner.

7. It is submitted that as per Section 468(2) of the CrPC, no Court shall take cognizance of the offences punishable with imprisonment for a period of three years after the expiry of three years after the date of the alleged incident. It is further submitted that the instant FIR was registered on 23rd August, 2020 and the time for taking cognizance of the alleged offences has already expired.

8. It is submitted that the petitioner has deep roots in the society and presence of the instant FIR against her would impact her standing in the society. It is further submitted that the petitioner has clean antecedents and that she is a law abiding citizen. Therefore, it is prayed that the instant FIR against the petitioner may be quashed.

9. *Per contra*, the learned APP appearing on behalf of the State vehemently opposed the instant petition submitting to the effect that the ultrasound was conducted by the petitioner and the disclosure of sex of the fetus was done by another co-accused namely Mr. Mohit. It is further submitted that after completing the investigation, the chargesheet has been made against the petitioner and other accused under Sections 4/5/6/23 of the PC & PNDT Act, 1994. Therefore, the instant FIR does not warrant quashing under Section 528 of the BNSS.

10. Heard the learned counsel for the parties and perused the material placed on record.



11. At this stage, it is important to discuss the settled law on the application of Section 468 of the CrPC. Section 468 reads as under:

“468 - Bar to taking cognizance after lapse of the period of limitation.—(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]”

12. The above quoted provision of the CrPC clearly provides that the Court concerned should take cognizance of the offence within the time limit prescribed in the provision, after which it will be barred by limitation.

13. The Hon’ble Supreme Court in the case of ***P.K. Choudhury v. Commander, 48 Brtf (Gref), (2008) 13 SCC 229*** held that a Court cannot take cognizance of an offence if the same is barred by limitation. The relevant portion of the judgment is reproduced as under:

“...15. As an option to get the appellant tried in a ordinary criminal court had been exercised by the respondent, there cannot be any doubt whatsoever that all the prerequisites therefor in regard to the period of limitation as also the



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necessity to obtain the order of sanction were required to be complied with. A court of law cannot take cognizance of an offence, if it is barred by limitation. Delay in filing a complaint petition therefore has to be condoned. If the delay is not condoned, the court will have no jurisdiction to take cognizance. Similarly unless it is held that a sanction was not required to be obtained, the court's jurisdiction will be barred.”...

14. Therefore, from the above quoted judgments, it is well-established that the Court concerned can take cognizance of an offence within the time limit as prescribed under Section 468 of the CrPC.

15. In the present case, the FIR was registered on 23rd August, 2020. However, cognizance of the offence has not been taken in the present case despite the expiry of the maximum time limit of three years. Therefore, at this stage, taking cognizance of the said offence in the present case is barred by limitation in view of Section 468 of the CrPC.

16. At this stage, it is imperative for this Court to discuss the settled principles *qua* quashing of an FIR under Section 482 of the CrPC. In the case of ***State of Haryana vs. Bhajan Lal*, 1992 Supp. (1) SCC 335**, the Hon’ble Supreme Court laid down the principles for the scope of exercising Court’s inherent powers under Section 482 of the CrPC. The relevant portion of the said judgment is reproduced as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we



give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned,*



providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. The inherent powers of the Courts under Section 482 of the CrPC must be exercised sparingly and with great caution. From the abovesaid judgment, it is clear that the Court may quash a complaint under Section 482 of the CrPC if it is satisfied that the allegations made against the accused in the complaint, even when they are taken at face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. Further, the Court may also invoke its extraordinary powers to quash a complaint if the allegations made in the complaint are so absurd and improbable that no prudent person may reach a conclusion that there is sufficient ground for proceeding against the accused.

18. The instant FIR has been registered against the petitioner under Sections 4/5/6/23 of the PC & PNDT Act, 1994 for performing ultrasound on the decoy patient and subsequently revealing the sex of the fetus in the raid conducted in M/s Perfect Ultrasound Centre & Diagnostic Lab. It is the petitioner's case that the offence under the said provisions is not made out against the petitioner. The aforesaid provisions are reproduced as under:

4. Regulation of pre-natal diagnostic techniques.—On and from the commencement of this Act,—

“(1) no place including a registered Genetic Counselling



Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

(2) no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:—”

- (i) age of the pregnant woman is above thirty-five years;*
- (ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;*
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;*
- (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;*
- (v) any other condition as may be specified by the Board:*

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

(4) no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2);

(5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex selection technique on



her or him or both.]

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.]”

19. In the instant FIR, the specific role assigned to the petitioner is merely



limited to the performance of ultrasound on the decoy patient. There is no allegation made in the FIR against the petitioner which when considered uncontroverted, make out a *prima facie* case against the petitioner under the aforesaid provisions of the PC & PNDT Act.

20. It is important to note that the order dated 11th December, 2020, passed by the District Appropriate Authority, PC & PNDT Act, Government of NCT of Delhi, clearly stated that the petitioner does not appear to be guilty in the present case. The relevant portion of the said order is reproduced as under:

“On the date of hearing i.e. 25/11/2020 the accused, Dr. Sonia D. Narang owner-cum sonologist of the M/s PERFECT ULTRASOUND CENTRE & DIAGNOSTIC LAB, G-55 (G.F.), STREET NO. 11, HARI NAGAR, JAIL ROAD, NEWDELHI-110058 was present in person and submitted her explanations/comments on the instant issue. Accused Dr. Sonia D. Narang submitted that no money was recovered from her during the said decoy operation/raid and she further submitted that in the statement of the decoy patient in the presence of SDM(RG), it is stated that ultrasound was done for 25 to 30 minutes seems to be false as usually it takes around 5-10 minutes only.

Therefore in view of the reply of the show cause notice submitted and submissions made by Dr. Sonia D. Narang during personal hearing, it seems that she is not guilty and no legal proceedings are contemplated against her. I am personally satisfied with her oral and written submission.”

21. Upon perusal of the above quoted order, it is clear that the authority concerned examined the present case taking into consideration the



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explanation and comments of the petitioner, and thereafter reached a conclusion in favour of the petitioner recording that she does not seem to be guilty.

22. In the present case, it is clear that the uncontroverted allegations against the petitioner, as stated in the FIR, are merely limited to the claim that the petitioner performed ultrasound on the decoy patient. There is nothing placed on record to satisfy this Court that the operation so performed by the petitioner was in contravention of the law. There is no averment made to satisfy this Court that the pre-diagnostic techniques were conducted by the petitioner in violation of Section 4 of the PC& PNDT Act, or that the petitioner herself determined or communicated the sex of the foetus, violating Section 5 and 6 of the PC& PNDT Act. Therefore, this Court is satisfied that a *prima facie* case has not been made out against the petitioner in the present case.

23. It is also important to note that there has been an inordinate delay in filing the chargesheet in the present case. Therefore, this Court is of the considered view that the present FIR is liable to be quashed to avoid any further harassment to the petitioner.

24. In view of the above facts and circumstances of the present case, this Court finds it a fit case to exercise its inherent powers under Section 528 of the BNSS to quash the impugned FIR. Accordingly, FIR bearing No. 0516, dated 23rd August, 2020, registered at Police Station - Hari Nagar (West), for the offences punishable under Sections 4/5/6/23 of the PC & PNDT Act, 1994 and all the consequential proceedings emanating therefrom are



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quashed.

25. The petition alongwith the pending applications, if any, stands disposed of.

26. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 4, 2024
gs/st/ryp

Click here to check corrigendum, if any

Signature Not Verified

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KUMAR BABBAR
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