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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 317/2015 CRL.M.A. 7946/2015 CRL.M.A. 1233/2019
CRL.M.A. 32500/2024

SHALU SINGHAL & ANRPetitioners

Through: Mr. Shivanshu Bhardwaj &
Mr. Rajiv Singh, Advs.

versus

DIRECTORATE OF HEALTH SERVICESRespondent

Through: None

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **06.12.2024**

1. This petition has been filed assailing order dated 25th April 2015 and 30th July 2013 in CC No. 267/2013 by the ACMM, East, Karkardooma Court, Delhi. A complaint was filed at the behest of respondent – Directorate of Health Services, Government of NCT of Delhi.
2. It is noted from the order sheets that no one has been appearing on behalf of respondent since 23rd January, despite court notices being also issued and service to the Standing Counsel.
3. The complaint was filed pursuant to an inspection carried out by the respondent on 12th September 2012 at the petitioner's clinic, which was registered under the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 ("**PCPNDT Act**") with the appropriate authority. Respondent issued a show cause notice to the petitioner on the basis that it was not registered under the Delhi Nursing Homes Registration Act, 1953 ("**Nursing Homes Act**") since, during inspection, it was observed that nursing home activities were being carried out at the petitioner's clinic.



4. Petitioners responded on 08th October 2012 stating that all related activities pertaining to termination of pregnancy cannot be termed as ‘*nursing home activities*’. Thereafter, on a subsequent inspection the same response was given; however, respondent filed the complaint on 24th July 2013 before the ACMM under Sections 3 and 6 of the Nursing Homes Act.

5. On 30th July 2013, the ACMM took cognizance of the offence and issued summons. Revision petition was filed before this Court, which was withdrawn with liberty to file a petition before the Magistrate. The Magistrate then dismissed petitioners’ application *vide* the impugned order.

6. Counsel for petitioners points out that it is noted in para 5B of the impugned order that the first date of inspection was 12th September 2012 and the limitation (as per Section 468 Cr.P.C.) was 6 months; thus, it expired on 12th March 2013. This is a matter of record that no cognizance was taken in the meantime and therefore, there was a bar for taking cognizance subsequently.

7. However, by the impugned order, the ACMM chose to interpret Section 6, Nursing Homes Act to implicate petitioners for “*a second and subsequent offence*” and took cognizance of the same and put the matter up for framing of charges.

8. Counsel for petitioner points out that having not been convicted for the first offence, the question of a second and subsequent offence does not arise. For this, he relies on a decision of the Rajasthan High Court in **State v. Badri** 1965 RLW 178, where it has been stated that second offence must be construed as offence which has been committed after the offender has been convicted for the first offence.

9. He further contends that the ACMM’s interpretation, *vide* the impugned order, is erroneous having compared the matter with Section 177, Motor Vehicle Act, 1988 which uses the phrase “*and*” as opposed to the



usage of the phrase “*or*” in Section 6 of Nursing Homes Act.

10. In the opinion of this Court, the phrase “*second offence*” would naturally be post conclusion of proceedings of the “*first offence*”. In this case, since no cognizance was taken in the first offence, the question of any subsequent inspection leading to a ‘*second and subsequent offence*’ cannot arise.

11. In any event, the respondent has chosen not to pursue and stopped appearing before this Court.

12. In any event it is pointed out that the Status Report filed on 10th February 2016 notes that said clinic/centre was no more being used for any ‘*nursing home activities*’.

13. Accordingly, the petition is allowed and the impugned orders are hereby set aside.

14. Petition is disposed of in above terms.

15. Pending applications are disposed of as infructuous.

16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 6, 2024/sm/sc