



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 CRIMINAL APPLICATION NO.703 OF 2024

Satish Balasaheb Gaware,
Age 37 yrs., Occ. Medical Practitioner,
R/o Teachers Colony, Dhavleshwar,
Jalna, Tq. & Dist. Jalna.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Georai,
Tq. Georai, Dist. Beed.
- 2 Mohammad Mufti Taher Nomani,
Age 41 yrs., Occ. Medical Superintendent,
Sub District Hospital, Georai,
Tq. Georai, Dist. Beed.

... Respondents

...

Mr. R.G. Hange, Advocate h/f Mr. A.R. Hange, Advocate for applicant
Mr. G.A. Kulkarni, APP for respondent No.1

...

WITH

CRIMINAL APPLICATION NO.3352 OF 2024

Chandrakant Pandurang Chandanshiv,
Age 45 yrs., Occ. Vendor,
R/o Santosh Nagar, Georai,
Tq. Georai, Dist. Beed.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Georai,
Tq. Georai, Dist. Beed.
- 2 Mohammad Mufti Taher Nomani,
Age 41 yrs., Occ. Medical Superintendent,
Sub District Hospital, Georai,
Tq. Georai, Dist. Beed.

... **Respondents**

...

Mr. R.G. Hange, Advocate h/f Mr. A.R. Hange, Advocate for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 24th APRIL, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Both the applicants are accused in Crime No.9/2024 dated 04.01.2024 registered with Police Station, Georai, Tq. Georai, Dist. Beed and after the investigation is over in the proceedings in Regular Criminal Case No.69/2024 pending before learned Judicial Magistrate First Class, Georai, Dist. Beed, for the offence punishable under Sections 312, 120-B read with

Section 34 of the Indian Penal Code, 1860, Sections 3, 4 of the Medical Termination of Pregnancy Act, 1971 (for short, “**M.T.P Act**”), Sections 3(1), 3(3), 6(a), 6(b), 6(c), 18, 23(1), 23(2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, “**PC.PN.D.T. Act**”) and Section 18(c) punishable under Section 27(B)(ii) of the Drugs and Cosmetics Act, 1940.

2 Heard learned Advocate Mr. R.G. Hange holding for learned Advocate Mr. A.R. Hange for applicant and learned APP Mr. G.A. Kulkarni for respondent No.1, in both matters.

3 Learned Advocate appearing for applicants have taken us through contents of charge sheet including First Information Report and he submits that informant, who is the Medical Superintendent, Sub District Hospital, Georai, authorized by Civil Surgeon, Beed, has lodged the report. It is stated that one agent by name Manisha Shivaji Sanap through her associates is involved in the business of sex determination of fetus illegally by keeping a machine and thereby earning huge amount. It is alleged that applicant – original accused No.4 Dr. Satish Gaware was found to be doing the act of sex determination and keeping with him the articles required for medical termination of pregnancy. Accused No.2 was conspiring with him and he had made his house available for the illegal activities. The entire

charge sheet is based on statements of witnesses, especially the dummy witness, but these two applicants were not involved in the same. The said conversation appears to be between original accused No.1 and dummy witness. Though house of applicant Chandanshiv has been raided and certain articles were found, applicant Satish Gaware was not present there. Therefore, it cannot be said that there is any activity which is prohibited under P.C.P.N.D.T. Act was going on in the house of applicant Chandanshiv.

4 Learned Advocate appearing for applicants submits that offence has been registered and even charge sheet has been filed for the offence punishable under Section 312 of the Indian Penal Code, which prescribes, causing of miscarriage, but in the entire charge sheet there is no allegations or evidence to show that any miscarriage of a woman was caused. There is also no evidence to attract provisions of Section 120-B or Section 34 of the Indian Penal Code. Charge sheet is also under Section 3 and 4 of the Medical Termination of Pregnancy Act. Entire papers would show that actual termination of pregnancy has not been done. There are statements of two witnesses under Section 164 of the Code of Criminal Procedure viz. Pooja and Swati, who are the co-sisters and out of those Pooja was pregnant and was desirous of having son after two daughters and they decided to get Pooja checked. They got the number of accused No.1 Manisha. But taking into

consideration the fees that was quoted they had not given their amount, but then Manisha reduced the amount of fees. Accordingly, that amount was given on 02.01.2024. But when this fact was made known to relatives, the relatives stopped them and, therefore, they told accused Manisha that Pooja has no intention to get herself to check and they demanded their money. But it was told that the money would be given by applicant Satish Gaware. They were taken to the house of applicant Chandanshiv. But it was then realized that one of the ladies, who had come in the car, was a police person. The Doctor fled away and Chandanshiv and Manisha were caught on the spot. The articles which were owned by Doctor were stated to be the Sonography machine and some medicines. Thus, from these statements also it cannot be said that the termination of pregnancy was done. As regards the offences under P.C.P.N.D.T. Act and Drugs and Cosmetics Act an First Information Report has not been maintainable and, therefore, it would be unjust to ask the applicants to face the trial.

5 Learned APP strongly opposed the applications and submitted that since the offences under P.C.P.N.D.T. Act and the Drugs and Cosmetics Act are along with offence under the M.T.P. Act and the Indian Penal Code, the First Information Report is maintainable. He relies on the decision of Hon'ble Single Bench of High Court of Punjab and Haryana at Chandigarh in

Dr. Anant Ram vs. State of Haryana [CRM-M-36146-2021 (O & M)] decided on 02.04.2022, wherein after interpreting Rule 18A(3)(iv) of the P.C.P.N.D.T. Act it is held that there is no absolute bar against involvement of police. He submits that the entire investigation is over. First Information Report and the charge sheet is against four accused persons. Applicant Dr. Satish Gaware was absconding. After his arrest, supplementary charge sheet has been filed. On the secret information received that accused No.4 is carrying out such investigations and terminating the pregnancy after determination of sex of the fetus, the trap was laid by authorized person and police, at that time, Dr. Gaware managed to escape, however, however, applicant Chandanshiv and accused No.1 Manisha were caught. Portable Sonography machine along with other appliances, injection, MTP kit and other machinery for termination of pregnancy were seized from the spot. In respect of the Drugs and Cosmetics Act, it was found that the medicines, those were found at the place, were without prescription or procured authorizedly. Strong evidence has been collected and statements of witnesses under Section 164 of the Code of Criminal Procedure has also been recorded through learned Judicial Magistrate First Class. Under such circumstance, when offences under four Acts are involved, First Information Report is maintainable.

charge sheet it can be seen that the informant, who is the Medical Superintendent, Sub District Hospital, Georai, has conducted raid. In fact, the secret information was received by Civil Surgeon, Beed. Even Civil Surgeon, Beed was accompanying the police party. After arranging two panchas the entire staff went to the place. A Lady Police Constable, who was pregnant of three months, was made as dummy candidate and it is alleged that when it was found that one person has fled away, the police managed to arrest accused Manisha and applicant Chandanshiv. After the raid was conducted, First Information Report has been lodged under Section 154 of the Code of Criminal Procedure by respondent No.2 i.e. Medical Superintendent, Sub District Hospital, Georai. Statements of witnesses as well as panchnama show that there was no miscarriage of a woman caused at that place. Therefore, there was absolutely no question of attracting ingredients of Section 312 of the Indian Penal Code. There is no evidence for attracting Section 120-B of the Indian Penal Code also nor because three of them were there, Section 34 of the Indian Penal Code can be invoked. Further, Section 34 of the Indian Penal Code cannot be so invoked without there being any offence under Indian Penal Code section.

7 Secondly, even as regards Sections 3 and 4 of the M.T.P. Act, actual medical termination of pregnancy was not at all carried out and,

therefore, those Sections also not attracted. Now, what remains is, Sections under the P.C.P.N.D.T. Act and the Drugs and Cosmetics Act. Section 28 of P.C.P.N.D.T. Act prescribes thus -

“28. Cognizance of offences. - (1) No Court shall take cognizance of an offence under this Act except on a complaint made by -

(a) the Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the Court.

Explanation. - For the purpose of this clause, “person” includes a social organization.

(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) sub-section (1), the Court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.”

That means, only the appropriate authority can file a complaint of which the cognizance can be taken by a Metropolitan Magistrate or Judicial Magistrate First Class. The complaint here in this Section 28 of the

PC.PN.D.T. Act is a complaint defined under Section 2(d) of the Code of Criminal Procedure. Same is the case with the Drugs and Cosmetics Act. Section 32 of the Drugs and Cosmetics Act prescribes thus -

“32. Cognizance of offences. - (1) No prosecution under this Chapter shall be instituted except by -

- (a) an Inspector; or
- (b) any Gazetted Officer of the Central Government or a State Government authorized in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or
- (c) the person aggrieved; or
- (d) a recognized consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no Court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.”

Therefore, First Information Report under Section 154 of the Code of Criminal Procedure is not maintainable. We may take help of the decision of Hon’ble Single Bench of Allahabad High Court in **Dr. Brij Pal Singh vs. State of U.P and another** [2024 AHC 159207], wherein also it was

an application under Section 482 of the Code of Criminal Procedure for quashing the order and the entire proceedings, wherein apart from Indian Penal Code Sections, there were Sections under the P.C.PN.D.T. Act. The entire scheme under P.C.PN.D.T. Act has been considered, so also various decisions of various High Courts have been considered and provisions in respect of the Drugs and Cosmetics Act in the light of decision in **Union of India vs. Ashok Kumar Sharma** [(2021) 12 SCC 674] has been considered. It has been held in **Ashok Kumar Sharma** (supra) that *in view of bar provided under Section 32 of the said Act no proceedings can be initiated except on a complaint of the Drug Inspector for the offences under the Drugs Act*. This Court in **Dr. Sai vs. State of Maharashtra** [(2016) SCC OnLine Bom 8812] has observed that *no Court shall take cognizance of an offence under the PCPNDT Act except on a complaint made by an Appropriate Authority i.e. the Authority notified under Section 17 of PCPNDT Act*. This Court has even considered the provisions of Sections 17, 17A and 28 of the PCPNDT Act together and observed that Appropriate Authority has to act as an investigator to inquire into the allegations of violation of PCPNDT Act and Rules thereunder either on the basis of complaint received as well as to act *suo motu*. If the complaint is inquired and investigated results into collection of evidence sufficient to prosecute the person for violation of the provisions of PNPNDT Act, then only criminal proceedings is

expected to be filed under Section 28 of the PCPNDT Act.

8 In **Dr. Anant Ram** (supra) relied by learned APP, it can be seen that case was made out in respect of the offence under Indian Penal Code also and, therefore, the view was taken that First Information Report under Section 154 of the Code of Criminal Procedure is maintainable, however, in this case, at the cost of repetition, we would like to say that the facts of the case are not attracting the offence under the Indian Penal Code or M.T.P. Act and, therefore, we are constrained to look into only the PCPNDT Act and the Drugs and Cosmetics Act. This leads us to conclude that since the First Information Report was not maintainable in view of the bar under Section 28 of the PCPNDT Act and under Section 32 of the Drugs and Cosmetics Act, it would be an abuse of process of law if the applicants are asked to face the trial. Here, we are also making it clear that we have not gone into the aspect of, whether the informant can be considered as an appropriate authority as contemplated under PCPNDT Act and its rules. Case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Both Criminal Applications stand allowed.

ii) The proceedings in Regular Criminal Case No.69/2024 pending before learned Judicial Magistrate First Class, Georai, Tq. Georai, Dist. Beed, arising out of First Information Report vide Crime No.9/2024 dated 04.01.2024 registered with Police Station, Georai, for the offence punishable under Sections 312, 120-B read with Section 34 of the Indian Penal Code, 1860, Sections 3, 4 of the Medical Termination of Pregnancy Act, 1971, Sections 3(1), 3(3), 6(a), 6(b), 6(c), 18, 23(1), 23(2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Section 18(c) punishable under Section 27(B)(ii) of the Drugs and Cosmetics Act, 1940, stands quashed and set aside as against applicant **Satish Balasaheb Gaware** in Criminal Application No.703 of 2024 and applicant **Chandrakant Pandurang Chandanshiv** in Criminal Application No.3352 of 2024.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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