

**THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**

**CRIMINAL PETITION Nos.15649 and 15793 of 2014**

**COMMON ORDER :**

Criminal Petition No.15649 of 2014 is filed on behalf of Accused Nos.2, 3 and 11 and Criminal Petition No.15793 of 2014 is filed on behalf of Accused Nos.4 to 8 and 12, both under Section 482 of Cr.P.C. seeking the Court to quash the proceedings that are initiated against them through C.C.No.1783 of 2014, which stood pending on the file of the Court of III Additional Chief Metropolitan Magistrate, Hyderabad.

2. Heard the submission of the learned counsel, who is appearing for the petitioners in both the Criminal Petitions and the learned Assistant Public Prosecutor appearing for respondent Nos.1 and 2. Gave anxious and due consideration to their submissions and also the contents of the decisions that are relied upon by learned counsel for the petitioners.

3. The District Appropriate Authority, represented by the District Medical and Health Officer, Hyderabad, lodged a complaint against the petitioners in both the Criminal Petitions and 3 others i.e. Apollo Hospital, Jubilee Hills, Hyderabad, Dr. Vineeth and Dr. Ritesh, who are arrayed as Accused Nos.1, 9 and 10, respectively, alleging that they have committed offence punishable under Section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter be referred as “PNDT Act” for brevity). The said complaint was taken on file and thereby criminal proceedings were set into motion. Aggrieved by the same, the petitioners herein have approached this Court seeking to quash those proceedings.

4. Thus, in the light of the above factual scenario, the point that emerges for consideration is :

*Whether there exist any justifiable grounds to quash the proceedings that are initiated against the petitioners through C.C.No.1783 of 2014 pending on the file of the Court of III Additional Chief Metropolitan Magistrate, Hyderabad.*

5. Shorn of details, the facts, as narrated in the complaint, are that the National Inspection and Monitoring Committee along with the State Appropriate Authority inspected Apollo Hospital, Jubilee Hills, Hyderabad, on 16.03.2012. During the course of inspection, procedural violations in carrying out the activities through machines and improper maintenance of Registers was noticed. Further, the Certificate of Registration was found expired by 28.01.2012 itself. Therefore, the team of National Inspection and Monitoring Committee made certain recommendations, including seizure of machines and confiscation thereon. It further recommended initiation of legal action against all concerned by filing a case, cancellation of registration etc. On that, ultra sound scan machines, which are three in number, were seized. However, basing on the representation made, the said machines and other machines, totalling 11 in number, were given interim custody. Thus, Apollo Hospital, which is arrayed as Accused No.1, and other Accused i.e. the petitioners herein and Accused Nos.9 and 10, who are

Consultant Gynaecologists, and who have been handling the pre-natal diagnostic procedures in Accused No.1 – Hospital are jointly and severally liable for punishment under the provisions of the PNDT Act.

6. Learned counsel for the petitioners, taking this Court to the intricacies involved in various provisions of the PNDT Act, contended that the petitioners are not Consultant Gynaecologists, as narrated in the complaint, but they are all Radiologists and they have nothing to do with the registration certificates to be obtained and likewise they are not concerned with the contents of the registers, but they were illegally put to hardship and as they have not committed any offence, they approached this Court seeking to quash the proceedings that are initiated against them.

7. *Per contra*, the learned Assistant Public Prosecutor submitted that the petitioners were engaged by Accused No.1 - Hospital to work under it and though they are Radiologists, as submitted by learned counsel for the petitioners, they were maintaining the Department of

Gynaecology and were conducting procedures, which are prevented under the PNDT Act and, therefore, complaint was lodged against them too. The learned Assistant Public Prosecutor further submitted that though the Certificate of Registration expired by 28.01.2012, yet without taking steps for renewal, activities were carried out and, therefore, the provisions of the PNDT Act, which are to be followed in true sense, are violated.

8. As it was proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide, a Legislation was sought to be required to regulate the use of such techniques and, therefore, the PNDT Act was enacted. This Act provides for prohibition of sex selection before or after conception and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide.

9. Section 2(i) of the PNDT Act defines the term “pre-natal diagnostic procedures”, and likewise Section 2(j) defines the word “pre-natal diagnostic tests”. It says that pre-natal diagnostic tests, includes all pre-natal diagnostic procedures and pre-natal diagnostic tests.

10. Section 2(k) of the PNDT Act says what pre-natal diagnostic tests are.

11. It can be said without any hesitation that pre-natal diagnostic techniques, which means and includes all pre-natal diagnostic procedures and pre-natal diagnostic tests would normally be carried out by the Radiologists. The Act mandates that unless registered under the PNDT Act, no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or associate with, or help in conducting activities relating to pre-natal diagnostic techniques.

12. Section 3(3) of the PNDT Act envisages that no medical geneticist, gynaecologist, paediatrician registered medical practitioner or any other person shall conduct or

cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than the place registered under this Act.

13. Therefore, neither the gynaecologist nor Radiologist or for that matter any medical practitioner has got authority to conduct or aid in conducting pre-natal diagnostic techniques, which are prohibited.

14. Section 4 of the PNDT Act, which deals with the Regulation of pre-natal diagnostic techniques, says that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such a 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 of PNDT Act, unless contrary is proved by the person conducting such ultrasonography.

15. As per the version of the respondent, who lodged the complaint, the petitioners have committed offence punishable under Section 23 of the PNDT Act.

16. Section 23 of the PNDT Act lays down the offences and penalties. For the sake of proper understanding and fruitful discussion, the said provision is extracted hereunder :

23. Offences and penalties.—

(1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

(2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first



offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for the purposes other than those specified in sub-section (2) of section 4, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

(4) For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.

17. When learned counsel for the petitioners contended that the petitioners have not committed any offence and the offence, if any committed, is by Accused No.1 i.e. Apollo Hospital, Jubilee Hills, Hyderabad, and the petitioners, though were professionals, are employees of Accused No.1 and, therefore, they have nothing to do with the deviations that are found or non-renewal of Registration or non-maintenance of machines etc., opposing the said submission, the learned Additional Public Prosecutor

submitted that Section 26 of the PNDT Act deals with the offences by Companies and it lays down that every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

18. A perusal of Section 26 of PNDT Act discloses that it is akin to Section 141 of the Negotiable Instruments Act.

19. Dealing with the liability of the Directors and other employees of the Company and their responsibility, whether they can be held guilty of the offence, where the prime accused is the Company, the Hon'ble Apex Court in the case between POOJA RAVINDER DEVIDASANI vs. STATE OF MAHARASHTRA AND OTHERS<sup>1</sup> at paras 19 to 21 held as follows :

“19. A Director of a Company is liable to be convicted for an offence committed by the Company if he/she was in charge of and was responsible to the Company for the conduct of its business or if it is proved that the offence was

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<sup>1</sup> (2014) 10 SCC 1

committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned [See: State of Karnataka Vs. Pratap Chand & Ors. (1981) 2 SCC 335].

20. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the N.I. Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

21. In Sabitha Ramamurthy & Anr. Vs. R.B.S. Channbasavaradhya (2006) 10 SCC 581, it was held by this Court that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. [pic] Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. By verbatim reproducing the wording of the Section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the N.I. Act.”

Also at para-30 of the above decision, it is observed  
as follows :

“30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.”

20. Thus, it is clear that, though the Directors of the Company and other employees, as per Section 141 of the Negotiable Instruments Act or as per Section 26 of the PNDT Act are proved to be in such a position, unless and until *prima-facie* proof is produced that they were incharge of and were responsible in conducting the business of the Company, they cannot be tagged with criminal liability. Thus, this Court is in dis-agreement with the submission of the learned Assistant Public Prosecutor that taking aid of Section 26 of the PNDT Act, the petitioners can be held liable.

21. Learned counsel for the petitioners, during the course of his submission, contended that wide powers are given to the District Appropriate Authority and the said Authority has got every power to summon any person, to seek for production of any document or material object, to issue search warrant and to adopt any other procedure during the course of enquiry, but without doing so, the District Appropriate Authority has initiated proceedings against the petitioners, which is unreasonable.

22. Section 17-A of the PNDT Act deals with the powers of the Appropriate Authorities and it reads as under :

17-A. Powers of Appropriate Authorities.—

The Appropriate Authority shall have the powers in respect of the following matters, namely:—

(a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;

(b) production of any document or material object relating to clause (a);

(c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and

(d) any other matter which may be prescribed.

23. Admittedly, as per the contents of the complaint, no such power appears to have been exercised by the complainant i.e. District Appropriate Authority.

24. Submitting that when such power is not exercised and when without material details, complaint is lodged, the proceedings are liable to be quashed, learned counsel for the petitioners brought to the notice of this Court the decision rendered by High Court of Bombay at Aurangabad, between Dr. SAI vs. STATE OF MAHARASHTRA<sup>2</sup>. In the said decision, the High Court of Bombay at para-18 observed thus :

18. Thus, if we read the provisions of sections 17, 17A and 28 of the said Act together, then the role of the Appropriate Authority is very important. The Appropriate Authority has to act as an investigator to inquire into the allegations of violation of the PCPNDT Act and Rules thereunder either on the basis of complaint received as well as to act *suo motu*. The role of

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<sup>2</sup> (2016) 3 AIR Bom R (Cri) 616

the Appropriate Authority is not just to receive the complaint and file the proceeding in the Court of law. Section 17(4)(c) specifically provides that, one of the function of the Appropriate Authority is to investigate the complaints of breach of provisions of the act and the rules made thereunder and take legal action. Section 17(4)(e) provides that, the Appropriate Authority to take legal action against the use of any sex selection technique by any person at any place, *suo motu* or brought to its notice or also to initiate independent investigation in such matter. Thus, to investigate the complaints received against the persons violating the provisions of PCPNDT Act is the job of Appropriate Authority. Outcome of such investigation provides basis either to drop the proceeding or to initiate appropriate proceeding which includes initiation of criminal prosecution by filing complaint u/s 28 of PCPNDT Act. Mere report or complaint or information received cannot be sole basis to prosecute the person. If the complaint is inquired and investigated results into collection of evidence sufficient to prosecute the person for violation of the provisions of PCPNDT Act, then only criminal proceeding is expected to be filed u/s 28 of the PCPNDT Act. There appears to be specific legislative intent behind introducing Section 17-A in the PCPNDT Act (incorporated by amended act of 2003) to vest full-fledged powers of inquiry and Appropriate Authority to investigate the matter. Thus, the role of the Appropriate Authority is much more than the authority to file complaint.

25. Having regard to the power granted under Section 17-A of the Act, the Appropriate Authority ought to have investigated into the case by summoning the persons who,

according to it, were in custody of the Registers and were maintaining those Registers. Further, in the complaint, it is mentioned that the petitioners herein are Gynaecologists. However, it is brought to the notice of this Court by filing relevant documents that the petitioners are qualified Radiologists. Therefore, it is clear that the District Appropriate Authority is not even aware as to the exact qualification and the position of the petitioners herein.

26. Referring in the complaint a Radiologist as Gynaecologist itself would go to show that no enquiry was conducted into the genuineness or otherwise of the allegations. When power is granted for investigation to the Appropriate Authority for collection of appropriate material before lodging a complaint, the Appropriate Authority is under obligation to exercise the said power and to file a complaint thereafter, if required, so that the real culprits would be booked and the innocent, if any, can be eliminated. But, in the case of hand, such an enquiry is not found to have been made. Mere seizure of some machines and finding that the records concerned are



incomplete does not mean that the Doctors employed therein have violated the Rules. Admittedly, the Doctors employed, that too the Radiologists, would conduct investigations, as required or as prescribed, and would furnish report. It is for the staff who are appointed by the Hospital for the purpose of maintaining the records to maintain them properly and promptly. If the required records and registers are not maintained in the proper shape and proper form as required under law, then the Hospital authorities, who are maintaining the records and registers, can be made vicariously liable, but not the Doctors, who are employed only for the purpose of operating the machines and submitting their opinion. The District Appropriate Authority atleast ought to have issued notice to the petitioners herein to submit their version, which inturn, would have helped it to come to a just conclusion with regard to their involvement. It appears that under the directions and involvement of National Inspection and Monitoring Committee, Accused No.1 – Hospital was inspected and only basing on the recommendations made by the said Committee, the

proceedings, by filing complaint, were initiated against Accused No.1 – Hospital and others, including the petitioners herein. This is quite evident as per the contents of paras – 5 and 6 of the complaint.

27. The role and power of Appropriate Authority is clearly mentioned under Section 17 and 17-A of the PNDT Act. By the contents of those provisions, it is clear that the role of the Appropriate Authority and the part to be played by it is exhaustive and it cannot just receive information in the form of a complaint or just act *suo motu* and lodge a complaint without proper verification. It is not out of place to mention that if proper enquiry is conducted and the case is investigated into, the collection of material would even help the Appropriate Authority to place sufficient proof before the Court of law and to get the Accused convicted. But without doing so i.e. without exercising the power of enquiry, without enquiring into the allegations levelled and the information received, if the complaint is lodged and criminal proceedings are initiated, the same may not yield the desired result of the Appropriate Authority. Further,

unhesitatingly, it can be said that the person roped in as an Accused would be put to enormous loss and hardship. That is not the intention of the Legislature which has passed the PNDT Act.

28. In catena of decisions, including the famous case under Section 482 of Cr.P.C. i.e. STATE OF HARYANA vs. BHAJAN LAL<sup>3</sup>, it is laid down that to prevent abuse of process of any Court or otherwise to secure the ends of justice, the High Court has power to quash the proceedings. In the case on hand, the allegations made in the complaint, even if taken on their face value to be true, at least *prima-facie* case is not made out against the petitioners herein. Therefore, this Court is of the view that the criminal proceedings, as prayed for, are liable to be quashed.

29. In the result, both these Criminal Petitions are allowed. The proceedings initiated against the petitioners herein i.e. Accused Nos.2 to 8, 11 and 12 in C.C.No.1783 of 2014, which is pending on the file of the Court of III

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<sup>3</sup> 1992 SCC (Cri) 426

Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

30. Miscellaneous applications pending, if any, shall stand closed.

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**Dr. JUSTICE CHILLAKUR SUMALATHA**

17.02.2022.

NOTE: L.R. Copy be marked.  
(B/O)  
Msr

THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION Nos.15649 and 15793 of 2014

17.02.2022  
(Msr)