

(2014) 12 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 8062/2014

Charal Singh

APPELLANT

Vs

Sanjay Goyal

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 457, 482

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 23, 30

Citation : (2015) 1 MPHT 45

Hon'ble Judges : Alok Verma, J

Bench : Single Bench

Advocate : K.C. Raikwar, Advocate for the Appellant; B.L. Yadav, Advocate for the Respondent

Judgement

Alok Verma, J.—This application under Section 482, Cr.P.C. is directed against the order passed by the learned Chief Judicial Magistrate, Ratlam in Criminal Case No. 2270/2014, dated 1-7-2014 and the order passed by First Additional Sessions Judge in Criminal Revision No. 137/2014, dated 27-9-2014. The necessary facts are that the present applicant is running an Ultra Sound Sonography Center in the name and style of "Gyan Sono Center" at Ratlam. On 1-5-2014, a team constituted by the District Collector and the Appropriate Authority under Pre-Conception & Pre-Natal Diagnostic Act, 1994 (hereinafter referred to as "P.C. & P.N.D.T. Act") made an inspection in the Ultra Sound Sonography Center of the applicant and seized one sonography machine. It was alleged that the machine was purchased by the center and an intimation was given on 19-4-2010 to the Appropriate Authority. However, for installation and number of machine was not intimated and that is a violation of Rule 13 of Pre-Conception & Pre-Natal Diagnostic Rules (hereinafter referred to as "the Rules") and punishable under Section 23 of P.C. & P.N.D.T. Act. The applicant filed an application under Section 451 read with Section 30 of P.C. & P.N.D.T. Act before the learned Chief Judicial Magistrate. The application was dismissed by the Chief

Judicial Magistrate on the ground that the machine was subject matter of evidence. The case would be disposed of quickly, and therefore, there is no need to hand over ad-interim custody of the machine to the present applicant. Against this order, revision was filed by the present applicant. It was decided by First Additional Sessions Judge, Ratlam. In its order, the learned Sessions Judge observed that the machine was not a subject matter of a complaint filed by the Appropriate Authority under Section 23 of the Act of P.C. & P.N.D.T. Act and the machine was also not listed as one of the documents in the complaint filed by the Appropriate Authority. On such a premise, the learned Additional Sessions Judge observed that provision of Sections 451 and 457 of Cr.P.C. are not applicable in this case and as such, the Magistrate had no jurisdiction to grant ad-interim custody of the machine.

2. I have gone through the various documents and the complaint filed by the Appropriate Authority before the learned Chief Judicial Magistrate, Ratlam. It is apparent that not intimating the installation and number of machine by the present applicant is violation of Rule 13 of the Rules and as such punishable under Section 23. It is, however, true that in the list of documents the seizure memo of the machine is not listed, however, such a fault on the part of the complainant would not take away the jurisdiction vested in the Magistrate under Sections 451 and 457 of Cr.P.C. The machine is an electronic equipment, which requires continuous maintenance, if kept locked and unattended, the value of the machine may deteriorate. If, in view of the learned Chief Judicial Magistrate, some evidence is to be extracted from the memory chip of the machine, same can be done immediately. The print out may be taken with help of experts and thereafter, the machine may be handed over to the applicant. After fulfilling the formalities, as provided by the Act, use of Ultra Sound Sonography machine is not prohibited, only it is controlled by the provisions of the Act and the Rules.

3. Accordingly, I find that the learned Magistrate and the Revisional Court erred while dismissing the application filed by the present applicant under Sections 451 and 457 of Cr.P.C.

4. In this view of the matter, the impugned order passed by the Chief Judicial Magistrate in Criminal Case No. 2270/2014, dated 1-7-2014 and the order passed by the learned First Additional Sessions Judge in Criminal Revision No. 137/2014, dated 27-9-2014 are hereby set aside. The application filed by the applicant for ad-interim custody of the machine is hereby allowed. It is directed that if the applicant files an undertaking that the machine would not be used in violation of provisions of the P.C. & P.N.D.T. Act and the Rules, including without licence/permission from Appropriate Authority and a "Supurdnama" for Rs. 5,00,000/- the machine may be handed over to the applicant. It is further made clear that if in opinion of the learned Chief Judicial Magistrate, Ratlam, it is necessary to extract any information, which is necessary for disposal of the complaint filed by the Appropriate Authority, he is at liberty to do so with help of experts in this field and after giving notice to the present applicant before

releasing the machine to the present applicant. The learned Magistrate shall send an intimation to the Collector/Appropriate Authority before handing over the machine to the applicant. With these observations and directions, the application is disposed of.