

(2025) 05 SC CK 0300

In the Supreme Court Of India

Case No : Criminal Appeal No(S). 1969-1970 Of 2017

District Appropriate Authority

APPELLANT

Vs

Kaushik Babulal Shah & Anr

RESPONDENT

Date of Decision : 06-05-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 451
Pre Conception and Pre Natal Diagnostic Techniques Act, 1994 — Section 4(1), 5(2), 6(1), 23(1), 29, 29(1), 29(2), 30
Pre Conception and Pre Natal Diagnostic Techniques Rule, 1996 — Rule 9, 9(4), 9(6), 10(1), 12, 18(1)

Citation : (2025) 05 SC CK 0300

Hon'ble Judges : Bela M. Trivedi, J;Prasanna B. Varal, J

Bench : Division Bench

Advocate : Sanjay Parikh, Rashmi Nandakumar, Yashmita Pandey, Rushabh N. Kapadia, Pradhuman Gohil, Vikash Singh, Deepanwita Priyanka, Swati Ghildiyal

Final Decision : Dismissed

Judgement

Prasanna B. Varale, J

1. Under challenge in these criminal appeals preferred by the District Appropriate Authority, Ahmedabad is the judgement and order dated 01.10.2012 of the Gujarat High Court wherein the issue regarding opening of the seal of the ceased sonography machine which was case property (mudammal) was decided by the court in favor of the Respondent. The court observed that the Respondent had been acquitted both by the Trial Court as well as the appellate Court, and thus directed the seal to be opened. The High Court further directed that if any data was to be recovered from the machine then the Appellant Authority was at liberty to keep their Engineer present at the time of the opening of the seal of the sonography machine and retrieve any such data, and the same to be done in the presence of the Appellant. The subsequent judgement and order dated 22.10.2012 is also under challenge wherein the recall application preferred by the Appellant was dismissed in limine.

2. The factual matrix giving rise to the present appeal is as follows-

2.1 A sting operation was conducted by the Appellant Authority on 26.05.2009 wherein the Respondent, Kaushik Babulal Shah had conducted a sonography test and examined the embryo of one Kailashben Nitinkumar Parmar (who was a part of the operation) at the Manthan Imaging Centre, situated at Shivanand Complex, Maninagar. After the completion of the sonography test, it was alleged that he had disclosed the sex of the foetus as "male child" in consideration for a total amount of Rs 10,000/- where a sum of Rs. 5000/- was paid prior to the examination and the balance of Rs. 5000/- was paid after the examination. Subsequent to the sting operation, a complaint was lodged by the District Appropriate Authority (Appellant) against the Respondent on 27.05.2009. During search and seizure, the sonography machine was sealed. In the process it was also discovered that Form 'F' which as per the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter 'PC & PNDT Act') are mandatory to be maintained was found to have been incompletely filled. A case was therefore registered against the Respondent and his agents under Section 4(1), 5(2), 6(1), 23 (1) of P.N.D.T. Act, 1994 and Rules 9(4), 10(1), 9(6), 18 (1) of the 1996 Rules.

2.2 Against the sealing of the sonography machine, the Respondent preferred Writ Petition SCA No. 5830/09 before the High Court of Gujarat to remove the seal of the machine. In the said Writ, the Learned Single Judge vide order dated 30.06.2009 quashed the action of the Appellant Authority in sealing the sonography machine and directed to open the seal. The said order was challenged before the Division Bench in LPA No. 1371 of 2009 wherein the Division Bench on 07.12.2009 allowed the appeal and set aside the order passed by the Learned Single Judge giving direction to the Learned Metropolitan Magistrate, Ahmedabad to decide Criminal Case No. 785 of 2009 against the Respondent as expeditiously as possible

2.3 On 04.12.2012, the Respondent was acquitted by the Metropolitan Magistrate, Ahmedabad of all charges and it was directed that the seized property that is the sonography machine and other items be returned back to the complainant after the expiry of the appeal period. This judgement was challenged by the Government of Gujarat in Criminal Appeal No. 109/2012 before the Sessions Court. The Sessions Court confirmed the order of acquittal of the Respondent passed by the Metropolitan Magistrate vide order dated 23.08.2012.

2.4 In the meantime on 14.06.2012, Special Criminal Application, No. 1503 of 2012 was filed by the Respondent before the High Court of Gujarat praying to remove the seal of sonography machine in view of the acquittal of the Respondents and also taking into consideration that the Appeal period was over. The High Court vide order dated 01.10.2012 allowed the petition and held-

"6. Therefore, considering the right of the present petitioner original accused

regarding the use of the machine for his earning or livelihood or for his profession, it cannot be now deprived since he has been acquitted by two courts, that is, the trial court as well in appeal by the appellate court. Further, even if such data is to be retrieved, respondent No.2 Authority may keep their Engineer concerned present at the time of opening of the seal of the sonography machine in presence of the petitioner and may retrieve the data as required. However, this exercise may be done within a period of 15 days from today and if respondent No.2 Authority desires to have the data retrieved, it may take appropriate measures after intimating to the petitioner and shall open the seal within a period of 15 days from today, i.e., on or before, 15.10.2012."

2.5 The Appellant Authority then preferred Criminal Misc. Application No. 11045 of 2013 under seeking leave to appeal against the orders of acquittal passed by the Trial Court and the Appellate Court. This application is still pending. At this stage, the Appellant also filed a recall application, Criminal Misc. Application Number 14839 of 2012 (in Special Criminal Application No. 1503 of 2012), which was dismissed in limine vide order dated 22.10.2012.

2.6 Aggrieved by the order dated 1.10.2012 and order dt. 22.10.2012, the Appellant Authority has filed the present Appeal before us.

SUBMISSIONS

3. It is the contention of the learned counsel for the appellant that as per Section 29 of the PC & PNDT Act all the records and documents have to be maintained and preserved till the criminal proceedings are completely disposed of. It is submitted that in the order dated 01.10.2012 wherein the High Court has directed opening the seal of the sealed sonography machine, the Court has not considered the fact that a Criminal Appeal challenging the acquittal order passed by the Trial Court and the appellate court is still pending before the High Court. An order directing the opening of the seal of the sealed sonography machine during the pendency of the appeal is thus contradictory to the law laid down in Section 29 and Section 30 of the Act, and Rules 9 & 12 of the Rules 1996 and is liable to be set aside.

4. Per Contra, the counsel for the Respondents have submitted that the Respondent has been acquitted by the Trial Court as well as the Appellate court of all charges that were levied against him. It is submitted that the term "such proceedings" in interpreting Section 29 of the Act only applies to those proceedings which are pending before the Trial Court and the same cannot be interpreted to extend it further to any other court. The learned counsel has contended that the application for release of the sealed sonography machine was made to the High Court only after the criminal proceedings against the Respondent were finally disposed of that is after he was acquitted by the Ld. Metropolitan Magistrate and the same was confirmed by the Ld. Sessions Court. Hence there is no violation of Section 29 of the Act.

ANALYSIS

5. Heard Learned Counsel for the appellant as well as Ld. Counsel for the respondent. We have also perused relevant documents on record and the judgment passed by the High Court.

6. The short question that falls for consideration before this court is whether the High Court was justified in directing to open the seal of the sonography machine while the criminal proceedings were still pending.

7. At the cost of repetition, we may state a brief chronology of events admitted in the matter. A complaint was filed on 27.05.2009 after the sting operation conducted on 26.05.2009. On 30.06.2009 the learned Single Judge of the High Court quashed the action of the Appellant Authority and directed to open the seal. On 07.12.2009 the appeal was allowed by the Division Bench. The Division Bench directed the Metropolitan Magistrate to decide the criminal case against the respondent expeditiously. On 04.12.2012 the Metropolitan Magistrate acquitted the respondent of all charges and directed the appellant authority to return the seized property i.e. the sonography machine. On 23.08.2012 the learned Sessions Court confirmed the order of acquittal. On 14.06.2012 Special Criminal Application was filed by the respondent praying to remove the seal of the sonography machine. On 01.10.2012 the High Court passed the order directing the appellant authority to open the seal within a period of 15 days from the order i.e. on or before 15.10.2012. On 22.10.2012 the recall application was dismissed.

8. Taking into consideration, the above referred chronology of the events, the fact emerges that the sonography machine was sealed by the Appellant Authority in the year 2009 and till date is lying with the appellant authority in the same condition.

9. Section 29 and 30 of the PC & PNDT Act, 1994 deals with the maintenance and preservation of "records". The Relevant Sections 29 and 30 of the PC & PNDT Act, 1994 read as under-

"29. Maintenance of records

(1) All records, charts, forms, reports, consent letters and all the documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed:

PROVIDED that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the records and all other documents of such Centre, Laboratory or Clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf."

"30. Power to search and seize records, etc.-

(1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place, such Authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act."

10. As stated above Section 29(1) provides for preservation of the record for a period of two years or for such period as may be prescribed. Section 29(2) requires that such record shall be made available for inspection to the Appropriate Authority or any other person authorized by the Appropriate Authority at all reasonable times. A conjoint reading of these two provisions show that firstly the period for preservation of the record is either two years or the period as prescribed. And secondly, all such records should be available to the Appropriate Authority for inspection at all reasonable times. The proviso to Section 29(1) mentions that in a case where any criminal or other proceedings are pending then the records and other relevant documents are to be preserved till the final disposal of proceedings. However, given the facts in the present case, we are only concerned with the reasonability of the period for which such a record is to be preserved.

11. After perusal of the chronology of events referred above, and the provisions of law under the PC & PNDT Act, 1994, it is clear that in Section 29(1) there is no prescription of a specified period for which such record needs to be preserved. The words used in Section 29(1) are either 'two years' or 'as may be prescribed', and in Section 29(2) the words used are at all reasonable times. Admittedly, there is nothing on record to show that there is any prescription of period specified by way of any notification issued by either the government or the competent authority.

12. The sonography machine which was sealed way back in the year 2009 has been kept in the same situation i.e. under the sealed condition for 16 years now. No purpose would be served by accepting the submission of the learned counsel for the Appellant Authority to keep the machine sealed even after nearly 16 years. Not even any justifiable reason is coming forward from the Appellant Authority so as to why the sonography machine must be kept in a sealed condition for an indefinite period except an insistence that the proceeding is still pending and had not attained finality. Another aspect of consideration is that

keeping the sonography machine in a sealed condition for a further indefinite period would only result in making the machine either useless or worthless.

13. Chapter XXXIV of CRPC deals with Disposal of Property. Section 451 as reproduced below provides for Order for custody and disposal of property pending trial in certain cases-

"451. Order for custody and disposal of property pending trial in certain cases-

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation For the purposes of this section, "property" includes -

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

14. As stated above, Section 451 of the Code of Criminal Procedure provides the discretion to the Court to pass an appropriate order to release the property if the Court is of the opinion that the property is subject to speedy and natural decay or it is otherwise expedient to release the property. The Court, after recording the evidence as it thinks necessary, can pass the order either to sell the property or to dispose it.

15. We may also refer to the case decided by this Court in Ashok Kumar v. State of Bihar & Ors. (2001) 9 SCC 718 wherein the Court on the question of keeping the sealed property, in this case the vehicle, held that:

"We do not think it necessary to keep the vehicle in the compound of the court indefinitely for a very long time till the final disposal of this case. It is more advisable to entrust it to the registered owner on behalf of the court under certain conditions. We, therefore, direct the court in whose custody the vehicle is presently kept to release the same to the appellant."

(Emphasis supplied)

16. In the present matter, after a series of litigation and proceedings, the High Court passed the order on 01.10.2012 for release of the sonography machine by recording valid reasons including that the use of the machine is necessary for the respondent's earning and the livelihood of the respondent is dependent on it. The respondent has been acquitted by two courts i.e. the Trial Court and the Appellate Court. The High Court also directed as a cautionary measure that if any data from the machine is to be retrieved by the authority, then the same can be

done by keeping the concerned engineer present at the time of opening the seal of the sonography machine in the presence of respondent to retrieve such data. Thus, this direction very well takes care of the interest of the Appellate Authority. At the cost of repetition, we may state that no justifiable reason worth consideration is coming forward from the appellant authority to keep the sonography machine in a sealed condition for an indefinite period till the conclusion of the proceedings.

17. Considering all these facts and the reasons stated above, we see no reason to interfere with the impugned order in the present petitions. Therefore, the appeals being devoid of any merit, are liable to be dismissed. Accordingly, same are dismissed. The question of law, if any, is kept open.