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**(2010) 02 P&H CK 0113**  
**In the Punjab And Haryana At Chandigarh**

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| Dr. Preetinder Kaur and Others | Vs | APPELLANT  |
| The State of Punjab and Others |    | RESPONDENT |

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**Date of Decision :** 10-02-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Criminal Procedure Code, 1973 (CrPC) — Section 482  
Medical Termination of Pregnancy Act, 1971 — Section 5  
Penal Code, 1860 (IPC) — Section 120B, 312  
Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 28

**Citation :** (2011) CriLJ 876 : (2010) 158 PLR 63 : (2010) 2 RCR(Civil) 211

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

K. Kannan, J.

I The Lis

1. The petitioners, two of whom are medical practioners and the 3rd petitioner that supports the cause of the petitioners, namely the Indian Medical Association, have filed this writ petition under Article 226, 227 of the Constitution of India read with Section 482 Cr.P.C. to quash the order dated 06.11.2003 issued by the Deputy Commissioner, Bathinda authorizing the Assistant, Project Officer, DRDA, and PNDD Cell, Bathinda to file complaints in the Court of Chief Judicial Magistrate for alleged offences under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (called "the PNDD Act").

1. The principal grounds of challenge

2. The intervention through this writ petition was at the time when the trial was in progress after the charge-sheet had been framed for violation of Section 3(a) of the Act rendering themselves as punishable u/s 23. The grounds of challenge

principally are that the Act contemplates the proceedings to be initiated in a particular fashion on a complaint by the appropriate authority but the procedure had not been followed. The jurisdictional magistrate, who had taken the complaint on file, had no authority to initiate the legal action by issue of process when the procedure had not been followed. As a shot in the arm for the petitioners, the Director, Health and Family Welfare, Punjab had himself reported to have issued a memo dated 04.10.2007 to the Principal Secretary to the Government of Punjab directing withdrawal of complaints lodged under PNDT Act against the doctors of Bathinda on the ground that the person, who had filed the complaint namely, Shri Sadhu Ram Kusla, had never been authorized by the appropriate authority for taking any action and therefore, the action could not be pursued by the magistrate.

3. At the time of argument, the learned Counsel Shri Raina appearing for the petitioners also referred to the contentions as to how in one case the sonogram had been taken when the foetus was just around 10 weeks when determination of sex itself was not possible and how in yet another case it was seen to be a blighted ovum and there was no means that it could have gone for gestation for a fully developed foetus to determine the sex of the child. According to him, the Act does not prohibit the use of sonogram itself, for, it was still an essential medical investigation technique and the offence under the Act could be said to have been committed only if it was meant for detection of sex of the child that could result in a misuse leading to female foeticide.

### III. Contention in defence

4. The latter part of the argument relating to the merits of the contentions raised by the petitioners, I shall not dwell for, in my view, the case has to either stand or fall by whether the act complained of is so fundamentally an egregious error that a further pursuit in the proceedings before the magistrate would be unjustified. The contention on behalf of the respondents was also that even apart from the offence under the Act, there were other offences to which the petitioners had been chargesheeted u/s 312 read with Section 120B of the Indian Penal Code as well as u/s 5 of the Medical Termination of Pregnancy Act. The contention in defence therefore was that the case has to go on, for the offence complained of is not merely for violations of the provisions of the PNDT Act but also other offences for which the permission as set out u/s 28 of the Act, was not applicable. It was the further contention of the learned Counsel appearing on behalf of the respondents that the very same objection has been taken in some other cases complaining of want of jurisdiction on the ground that the person, who had filed a complaint was not competent to initiate the proceedings under the Act and this Court had rejected the challenge made u/s 482 Cr.P.C. on the ground that the issue would be decided only at the time of trial and cannot be prejudged at this time.

### IV. Issues for consideration

a) Basis of complaint examined

5. The basis for the action against the petitioners 1 and 2 have been the letter authorizing the 5th respondent to file criminal cases under PNDT Act by the Deputy Commissioner, Bathinda and it would, therefore, require to be reproduced:

District administration, Bathinda has launched a pilot project to combat the menace of female foeticide. In this project data of the pregnant ladies who undergo sonography is picked up from Form "F" of the PNDT Act and with the help of the software, suspected cases of female foeticide are short listed. These suspected case are visited by various government functionaries to check whether pregnancy is continuous or not and in case the lady has undergone abortion the detailed investigations are done to see if it is a case of female foeticide. I authorize Shri Sadhu Ram Kusla, Assistant Project Officer, DRDA and Project Officer, PNDT Cell, Bathinda to tile complaints in the Court of Chief Judicial Magistrate, Bathinda or any other appropriate Court where there is a prima facie case of female foeticide. For this purpose he can engage private advocate to assist him. Besides this District Attorney, Bathinda will also pursue these cases. All expenses will be met out from PNDT Cell/Red Cross, Bathinda.

b) Relevant section for lodging the complaint

The learned Counsel for the petitioners attacks this letter as wholly without any authority. The relevant provision relating to taking of cognizance of offences under the Act is set out u/s 28 of the PNDT Act:

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 authorised 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 thirty 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 organisation.

(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) of 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.

6. The contention is that the Court could take cognizance of an offence under the

Act (i) only on a complaint made by the appropriate authority or any officer authorized on behalf of the Central Government or the State Government, as the case may be, or the appropriate authority; (ii) it could also be taken at the instance of a complaint made by a person, who had given a notice of less than 15 days in the manner prescribed to the appropriate authority of the commission of alleged offence and of his intention to make a complaint to the Court. The latter situation would arise in a case whether the appropriate authority himself had failed to initiate action on a notice and when even a private individual could lodge a complaint. In the latter situation again Sub-section (3) empowers the Court to direct the appropriate authority to make available copies of the relevant records in its possession to such a person if he makes such a demand before the Court.

c) Civil surgeon of the district is the Appropriate Authority under the Act

7. The learned Counsel for the petitioners points out that the notification issued by the Government of Punjab dated 8th December, 1999 appointed the Civil Surgeon of all districts as district appropriate authority of their respective districts for effective implementation of the Act and also constituted a District Advisory Committee in all district to aid and advice the District Appropriate Authority in the discharge of the functions. According to the petitioners, admittedly the Civil Surgeon, Bathinda was very much available but he had not either lodged a complaint himself or he had not authorized the 5th respondent to lodge the complaint. If the Act requires the appropriate authority or the authorized person or the private individual, who had issued a notice to file a complaint any other person authorized by Deputy Commissioner is wholly without authority and cognizance could not be taken on such an unauthorized complaint.

d) Decision to pursue cases was taken in the presence and with knowledge of Authorised Authority - Minutes of meeting affords proof

8. As the petitioners makes it appear, it almost seems like an open shut case where the complaint is lodged only by a person other than the appropriate authority and therefore the continuance of the proceedings before the magistrate would be unjustified. The learned Counsel appearing for the respondent would urge that the complaint by the 5th respondent was not merely at the instance of the letter of authority issued by the Deputy Commissioner, which is impugned in the writ petition but it was the result of a decision taken in the presence of the Deputy Commissioner by the appropriate authority himself namely of the Civil Surgeon, sitting in a meeting along with other persons in PNDT Cell, Bathinda for taking action against persons, who they suspected to be guilty of violation of the provisions of the Act. At a meeting on 18.11.2003 at 5 P.M. under the Chairmanship of the Deputy Commissioner, at appears the fact of institution of 7 cases before the judicial magistrate and 5 new cases were discussed. The minutes of meeting which had been produced contains inter alia the following details:

All the above cases were discussed in detail and it was found that there is strong evidence of female foeticide and criminal proceedings are required to be launched. It was suggested by the Civil Surgeon, (District Appropriate Authority) Bathinda that previously in seven cases complaints in different Courts have been launched by the Project Officer, PNMT Cell, Bathinda and it will be better if these complaints will also be filed by him. After discussion it was decided that Project Officer PNMT Cell will file all the complaints in different Courts on behalf of the District Appropriate Authority/PNMT Cell, Bathinda....

e) Initiation of proceeding on a complaint by a person authorized by DC but later ratified by an authorized authority is irregular but not illegal

9. I have no doubt in my mind that going by the expression used u/s 28 strictly, the person, who lodged the complaint did the same only on a letter of authority issued on 06.11.2003. The reading of the resolution clearly shows that after the complaint had been filed, the Civil Surgeon, who is the appropriate authority, knew about the same and he had not merely approved of the same but had also suggested that some more complaints have to be filed against some other individuals. If the taking of a complaint on file is an illegality, there shall be no further continuance of the same. On the other hand, if it is seen to be irregular, judging by the importance of the legislation and the despicable social evil that it seeks to abate, an interpretation shall be so made that a criminal process began in right earnest on a complaint by a person whose authority was initially suspect but whose authority came to be ratified by subsequent conduct is not thwarted. The Act was intended to eradicate the social menace of female foeticide and if in a process, it is evidenced that the appropriate authority being the Civil Surgeon had participated in a discussion where he had discussed with the Deputy Commissioner, the fact that the complaints had been taken at the instance of the Project Officer, PNMT Cell (5th respondent herein) purportedly under the authorization of the Deputy Commissioner makes it an irregular exercise and still not an illegal exercise.

f) Persons authorized to file a complaint -fairly a large body of persons

In my view, the Section detailing the procedure for taking cognizance of an offence does not make the presence or the actual filing by the appropriate authority itself as sacrosanct. Apart from the appropriate authority, an officer authorized by the Central Government or the State Government could also file a complaint. It can also be a person authorized by the appropriate authority himself. Still more, even any person, who has given a notice to the appropriate authority and who had expressed his intention to make a complaint to a Court could lodge a complaint. This person need not be even in any way personally connected with the incident. The explanation contained u/s 28 for the expression "person" includes a social organization. The various categories of persons, which are set out u/s 28 more than it restricts the person, who can give a complaint, as made to appear by the petitioners, gives a wide class of persons, who can initiate the action. In other words, Section 28 does not narrow down the class of

persons, who can initiate action; on the other hand, as any legislation intending to prevent a social evil, it allows for fairly large body of persons to set the law in motion. In this case, the 5th respondent, the Project Officer, PNDT Cell, was definitely a person, who is not a stranger to the action; he was a Nodal Officer for the PNDT Cell. He was intimately connected with the enforcement of the Act. If he did not secure the sanction from the appropriate authority at the time when he lodged the complaint, the matter was surely ratified by the appropriate authority in a meeting held subsequently when the issue of lodging of complaints had been discussed and the appropriate authority had also directed fresh complaints to be filed against certain other individuals.

g) Issue of ratification itself arises only when the initial act was without authority.

10. The learned Counsel appearing for the petitioners would say even this ratification was not valid. The ratification must be with reference to an Act, which is in excess of the authority granted to the agent and when the competent person ultimately approves or ratifies the same. If, on the other hand, the person, who acted initially was not merely acting in excess of the authority but was acting without authority then the ratification does not simply arise. The learned Counsel relies on the judgment of the Bombay High Court headed by Chief Justice Chagla in *East and West Insurance Co. Ltd. Vs. Kamala Jayantilal Mehta*, , which was a decision with reference to the provisions of the Companies Act where the Court held in the context of the application of the principle of ratification as provided under the Contract Act, "Where a valid resolution has been passed by some one lacking the necessary authority the persons with the requisite authority may adopt the resolution validly passed and thereby ratify it. But where the objection to the resolution is not the wanting of authority but illegality in the very making of it, in the very passing of it, then it is impossible to accept the contention that the doctrine of ratification can validate a resolution which when it was passed was invalid." In my view, the above decision must be understood only in the context of the particular facts. I have already explained that Section 28 must not be read as constituting a narrow class of persons, who could initiate the action. It must be given an extensive meaning to pave way for an easy access to set the law in motion by any socially conscious person. In this case, the fact that the Project Officer of the PNDT Cell did not hold a direct sanction from the appropriate authority at the time of lodging a complaint was immaterial, so long as the appropriate authority approved of the same immediately thereafter. The learned Counsel appearing for the petitioners also relied on the decision of the Hon"ble Supreme Court in *State of Uttar Pradesh Vs. Singhara Singh and Others*, , which held that if under the provisions of the Criminal Procedure Code if a confession was recorded by a magistrate not empowered by the State Government, even oral evidence to prove such a confession shall not be admissible. Yet another decision that on which the learned Counsel placed reliance was *Narbada Prasad Vs. Chhaganlal and Others*, , that dealt with the situation of the requirement of a valid nomination paper under the Representation of the People Act when the Hon"ble Supreme

Court held that if an Act required a particular procedure for acceptance of a nomination paper and if there was no compliance of the provisions of the Act, the Court shall not dispense with such a requirement. The Hon"ble Supreme Court underscored that if a thing is required to be done in a particular manner, it must be done in that manner or not at all; other modes of compliance are excluded. A pithy expression of what procedural safeguard in criminal legislation would mean was graphically set out in McMABB et al. v. United States 318 U.S. 332 (1943) when Hon"ble U.S. Supreme Court spoke: "The history of liberty has largely been the history of observance of procedural safeguards. And the effective administration of criminal justice hardly requires disregard of fair procedures imposed by law," All the above judgments relied on by the learned Counsel for the petitioners are to emphasize that there could be no deviance from the manner in which a complaint could be filed and the. person who could lodge such a complaint.

h) Consideration of why the trial shall not be stalled now

11. In this case, by the view that I have taken that the complaint filed by the Project Officer, PNDT, was not illegal but it was only irregular and that the subsequent discussion and recording of minutes by the appropriate authority constituted valid ratification, I do not, for one moment mean to approve of the action of the Project Officer unexceptionally. If the Act requires that the complaint could be instituted only by certain classes of persons, it ought to be done in the same manner. However, in this case, we have at our hand a situation where the case has progressed for sufficiently a length of time and the person at whose instance the complaint progressed was not an utter stranger but he was a Project Officer of the enforcement Cell and the appropriate authority had also participated in the deliberations and approved of the actions taken already. The legislation has an important social mission and a restrictive understanding to the person, who could initiate action or the application of provisions that could stall further progress in trial is simply incongruous. I have already stated that there other offences also that the petitioners remain charged with. The stage at which an intervention is sought is also, in my view, not appropriate. To the same type of the complaint by the same officer, this Court had already directed the continuance of the trial. The witnesses appear to have been examined in this case. The intervention is sought at the eleventh hour.

V. Contention: Mere charge-sheet for commission of offence, if unjustified, is harassment

12. The learned Counsel Shri Raina would persist on an argument that the registration of complaint and the cognizance of the same by the magistrate were so fundamental that it would be unfair to let the trial go. The petitioners were already put to sufficient harassment by their names being paraded in several public places that had a serious consequence of not merely tarnishing their names but also having portents of causing suspension of the licence to practice by the operation of Section 23 of the Act. If the Act contains serious

consequences of a complaint by an appropriate authority to suspend registration of any genetic counseling centre, the provisions themselves provide for sufficient safeguards that no such suspension of registration could be done without putting on notice the person who may be affected by the decision to show cause against such action.

13. There is however, a certain merit in the contention of the learned Counsel for the petitioner that the very framing of charge-sheet can result in disastrous consequences, for Section 23(2) provides that the name of a medical practitioner reported by the appropriate authority to the State Medical Council for taking action might include even an action for suspension of the registration even at the stage when the charges are framed by the Court and till the case is disposed of. A conviction may result in removal of his name but mere framing of a charge could result in suspension. It is to be noted that so far no such precipitate action has been taken and having regard to the fact that I have observed that there was an irregular exercise of authority, I am of the view that the protection that the petitioners shall have during the pendency of the case is that no action for suspension shall be recommended by the appropriate authority during the pendency of the case and the authorities shall not also notify the petitioners to any adverse publicity till the case is completed. These observations are to off-set the apprehension expressed by the petitioners that the prolonged criminal action and trial will cause immense hardship and embarrassment for medical professionals, who are held in high esteem of the Society.

#### VI. Conclusion

14. The trial shall now continue and the magistrate before whom the cases are pending shall endeavour to conclude the same as expeditiously as possible. The petitioners will have a protection against any adverse publicity or any possible action in the manner referred to in the previous paragraph.

15. The writ petition is dismissed but subject to the protection referred to above.