
(2014) 05 BOM CK 0073

In the Bombay High Court

Case No : Criminal Writ Petition No. 255 of 2013

Dr. Ravindra and Dr. Sudarshana

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 2(d), 20, 23, 25, 26

Citation : (2014) 05 BOM CK 0073

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : B.R. Kedar, Advocate for the Appellant; S.V. Kurundkar, Public Prosecutor, Shri V.D. Godbharle and Mrs. S.G. Chincholkar, A.P.P. for Respondent Nos. 1 and 2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—The present Petition has been filed to quash complaint filed by Appropriate Authority (hereafter referred as "complainant") under the provisions of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereafter referred as "Act") and the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereafter referred as "Rules").

2. The Petition is Admitted and has been heard finally. Learned counsel for the Petitioner as well as learned Public Prosecutor for the Respondents submitted elaborate arguments. With this matter some other similar matters were also argued and Counsel for Petitioners adopted arguments of each other on law points to request for quashment of Criminal Trials against accused.

3. The Petitioners claim that Petitioner No. 2 is running her Maternity Home wherein Petitioner No. 1 is running his registered sonography centre under the name and style as "Suvidha Hospital and Sonography Centre" at Jamner. It is claimed that the Petitioners are running hospital and registered sonography

centre without any complaints and complying all the provisions of the Act and Rules. It is claimed that the permission to run the sonography centre was to expire on 17th November, 2011 and Petitioner No. 1 had applied for renewal on 14th October, 2011 but it has been granted only on 3rd November, 2012 with effect from 17th November, 2011, for five years. The Petition makes grievances as to how inspite of applying for renewal on time, there was delay. According to the Petitioners, Respondent purporting to be Appropriate Authority, conducted Panchnama of the sonography machine on 1st December 2011 and issued notice and sealed the sonography machine on 5th December, 2011. Petition gives particulars as to how Petitioners moved the Courts and Judicial Magistrate, First Class, Jamner, vide order dated 19th May, 2012 directed to open seal of sonography machine and so Writ Petition No. 2121 of 2012 filed by the Petitioner No. 1 in the High Court came to be withdrawn on 20th June, 2012. According to the Petitioners, Respondent had given notice dated 9th December, 2011 (Exhibit G) claiming violation of the provisions of the Act and Rules. The Petitioners gave the appropriate reply on 12th December, 2011. According to the Petitioners, even the District Advisory Committee accepted the explanation of the Petitioners and recommended to open the seal of the sonography machine. However, according to the Petitioners, the Respondent filed complaint bearing R.C.C. No. 56 of 2012 before the Court of J.M.F.C., Jamner alleging offence under Sections 4(3), 5, 6, 27 read with Sections 23, 25 and 28 and Rules 9(1)(4), 10(1-A) of the Act and Rules. Claim is that the Petitioners had not committed any offence and the complaint deserves to be quashed. It is claimed that it is wrong for the Respondent to allege that there were irregularities in maintaining F Form register and taking signatures of the pregnant woman on declaration when on-line reports submitted by the Petitioners were complete in all respects. It is submitted that on-line forms submitted were complete in all respects. The Petitioners claim that deficiencies pointed out were not there and that there were complete compliances of the provisions of the Act and Rules.

4. On behalf of the Respondent, affidavit-in-reply has been filed. It is claimed that during the visit to the hospital of the Petitioners, it was found that on 15th May, 2011 and 9th June, 2011 accused conducted sonography on pregnant woman Nayana Sunil Gaikwad and Shabana Tadv, however in F Forms, column No. 4 i.e. number of children was not filled. On 27th January, 2011 and 23rd April, 2011 the accused had conducted sonography on two pregnant women, Sarita Gosavi and Parvatabai Dahatonde but in inspection it was found that declaration forms of both the patients in Form F were not maintained and their signatures/thumb impressions were not obtained. It was noticed that on 17th May, 2011 one Maya Jadhav, pregnant woman was examined but her F Form was not completely filled up and column No. 17 was left blank. On 23rd November, 2010 accused examined one Seema Kalse and in Form F in column No. 14 it is shown that there is "missed abortion" and in column No. 18 it was shown-advise for M.T.P., however in column No. 19 nothing was written and it was left blank. Therefore complainant seized registers of F Forms, M.T.P. registers from 1st

August, 2011 and prepared Panchnama. Show cause notice was issued to accused on 9th December, 2011 and accused replied on 12th December, 2011. In reply, the Petitioners supplied on-line F Forms but Petitioner manipulated the declaration of Savita Gosavi and Parvatabai Dahatonde, while declaration forms of Savita Gosavi and Parvatabai Dahatonde were without signatures/thumb impressions when the record was seized by the complainant. Thus, the complaint was filed. The complaint filed makes out prima facie case. The Respondent wants the Petition to be rejected.

5. It has been argued by the learned counsel for the Petitioners that the sonography centre was registered in the name of Petitioner No. 1 and Petitioner No. 2 was not concerned and only the hospital is of Petitioner No. 2 and thus, she has been wrongly added as an accused in the complaint. The counsel strenuously argued as to how the Petitioners had applied for renewal of permission but the Authorities delayed the same. It was argued that in notice dated 9th December, 2011 (Exhibit G) complainant informed about the errors in F Form. According to the counsel, there were correct compliances of filling of F Forms which were submitted on-line and there was no intention not to correctly fill up the printed F Forms. Regarding deficiencies pointed out that the office copies of the concerned documents did not bear thumb impressions of the patients concerned, the argument is that the Petitioners collected the originals from the patients which had the thump impressions and thus, according to the counsel, there were no defects. Regarding other deficiencies pointed out also, the argument is that on-line forms submitted by the concerned contain all the information and in printed forms some columns remained to be filled in. The counsel referred to the explanations given in reply letter dated 12th December, 2011 to argue that the Petitioners had properly explained and thus there were no deficiencies or inaccuracies. It was submitted that filling of F Forms by the Petitioners was not necessary as what the Petitioner No. 1 is running is sonography centre and Rule 9(4) refers to Genetic Clinic and does not refer to Sonography Centre and so it was not necessary for the Petitioners to keep F Forms. The counsel for Petitioners referred to Para 2 of the complaint where it is averred that Petitioner No. 1 is the owner of the sonography centre and also handler of sonography machine and that Petitioner No. 2 is also handler of the sonography machine in the said hospital. The argument is that the certificate of registration, Exhibit B filed on record shows that only Petitioner No. 1 is the handler of the machine and thus the complaint against Petitioner No. 2 is not maintainable. It is argued that in view of on-line keeping of records, manual maintenance of records is not necessary.

6. After referring to the various provisions of the Act, reference was made to the case of Dr. Pratidnya Jayesh Shinde and Dr. Rahul Sudhirchandra Shinde Vs. Appropriate Authority, Dr. Rameshchandra Kisan Savkare and The State of Maharashtra, . In that matter, proceeding was quashed as the complaint was silent as to how responsibility of maintaining records was cast upon the concerned Applicants as were before the Court. Reliance is also placed on the

Judgment in the case of Dr. Alka w/o Anant Gite and another vs. The State of Maharashtra in Criminal Application No. 3500 of 2011 decided on 11th May, 2012. Referring to that Judgment, submission is that inadvertently if a column is blank, it cannot attract offence. Relying on the case of "Dr. Mrs. Uma Shankar Rachewad vs. Appropriate Authority"-Criminal Writ Petition No. 407 of 2011, decided on 19th April, 2012, it is submitted that writing of "N.A." i.e. Non-Applicable does not amount to incomplete filling of Form. Judgment in the case of Dr. Ravindra S/o. Shivappa Karmudi vs. The State of Maharashtra in Criminal Application No. 757 of 2012 decided on 3rd May, 2012, was referred to submit that F Form was incomplete does not mean criminal offence is there. Reliance was also placed on the Judgment in the matter of Dr. Tushar Rangrao Patil vs. Appropriate Authority in Criminal Writ Petition No. 406 of 2011 decided on 2nd May, 2012. These are matters decided by learned Single Judge of this Court. The submission is that in those matters also although there were defects in maintaining of Form F, the Petitioners therein were given benefit and the concerned cases against those Petitioners were quashed. Thus it is argued that the Petition needs to be allowed.

7. Learned Public Prosecutor submitted that even if on-line Form is submitted, keeping of hard copies as per the provisions of the Act is necessary. In the matter of Radiological and Imaging Association (State Chapter- Jalna) Vs. Union of India (UOI), State of Maharashtra and Mr. Laxmikanth Deshmukh, Collector and District Magistrate, , observations in Para 27 show that in every field electronic filing is to be followed by submitting paper documents. The Act and Rules require maintaining of Records basically in form of documents in hard copies. Record in electronic form is additional, to be kept for processing and checking. It is argued that there were various deficiencies in maintaining of the F Forms and records as has been clearly given in details in the affidavit-in-reply. The Public Prosecutor referred to contents of the complaint where specific details are given as to how the concerned F Forms were not filled and records were not properly maintained. The submission is that the complaint supported by documents, clearly makes out offence for which the Petitioners have been charged.

8. To appreciate the controversy, it would be appropriate to keep in view certain provisions of the Act.

? Portions relevant from Section 4 of the Act are as under:-

4. Regulation of pre-natal diagnostic techniques.-On and from the commencement of this Act,-

(1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting prenatal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

(2) no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:-

(i)... (iv)...

(ii)... (v)...

(iii)...(vi)...

(3) no prenatal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:-

(i)...(ii)...

(iii)...(iv)...

(v)...

Provided that the person conducting ultra sonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultra sonography;

(4)...

(5)...

? With reference to the above proviso as regards keeping of records, relevant portions of Rule 9 are as under:-

9. Maintenance and preservation of records.-

(1) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic including a Mobile Genetic Clinic, Ultrasound Clinic and Imaging Centres shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test.

(2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counseled shall be as specified in Form D.

(3) The record to be maintained by every Genetic Laboratory, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test shall be as specified in Form E,

(4) The record to be maintained by every Genetic Clinic including a Mobile Genetic Clinic, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.

(5)...

(6)...

(7)...

(8)...

? In Rule 10 conditions for conducting prenatal diagnostic procedures are prescribed, which includes obtaining written consent as prescribed in Form G in a language the person undergoing the procedure understands.

? Section 20 of the Act deals with cancellation or suspension of the registration. Sub-section (1) and (2) deal with giving of notice and reasonable opportunity before suspending or cancelling registration of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic. Sub-section (3) of Section 20 reads as under:-

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

9. The learned Public Prosecutor submitted that the cases under the Act are treated as warrant cases instituted otherwise than on police report. It has been argued that major or minor violation in the keeping of records is immaterial.

10. Scheme of the Act and Rules need to be appreciated:

(A). Proviso below Section 4(3) of the Act shows that persons conducting ultra sonography on a pregnant woman are required to keep complete record thereof in the clinic in such manner as may be prescribed and any deficiency or inaccuracy found therein shall amount to contravention of provisions of Section 5 or Section 6 of the Act unless contrary is proved by the person conducting such ultra sonography. Section 5 of the Act relates to taking written consent of pregnant woman and prohibition of communicating the sex of foetus. Section 6 of the Act prohibits determination of sex by Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic or any person. Rule 9 relates to maintenance and preservation of records and this inter-alia includes keeping record in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test in specified Form F. Although sub-rule (4) of Rule 9 refers to Genetic Clinic, definition of "Genetic Clinic" as in Section 2(d) of the Act specifies that Genetic Clinic means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures. Thus, all such places are covered where pre-natal diagnostic procedures are being conducted and all persons doing the same are also covered, and as per the statute, maintaining of proper records and Form F as prescribed, is mandatory.

(B). Section 5 requires taking written consent of the pregnant woman and prohibits communication of sex of foetus. In this regard Form G is prescribed in Rule 10. (According to the Public Prosecutor Section 5(2) of the Act prohibits

communicating of sex of the foetus by words, signs, or in any other manner and thus according to him displaying of even photographs of Gods and Goddess where pre-natal diagnostic procedures are conducted, is not permissible, as the same gives opportunity to convey sex of foetus by signs or in other manners.)

(C). Section 23 of the Act shows that medical geneticist, gynecologist, 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 the Act or rules made thereunder is also liable for punishment. u/s 23 of the Act, the owner of Centre, Laboratory, Clinic who takes professional services to run the Centre where pre-natal diagnostic techniques are conducted, is also liable, if any provisions of the Act or Rules are contravened.

(D). u/s 26 of the Act, with reference to companies, the word "company" means any body corporate and includes a firm and other association of individuals and such persons are also liable, when offences by Companies are there.

(E). In view of Section 3(3) of the Act, prenatal diagnostic techniques can be conducted only at place registered and any change has to be reported. Under Rule 13 every change of employee, place, address and equipment installed has to be informed to the Appropriate Authority.

11. I have heard learned counsel for the Petitioner as well as learned Public Prosecutor. Record has been perused. The criminal case filed by the Appropriate Authority in the lower Court supported by documents shows the deficiencies and inaccuracies found and necessary particulars are there. Counsel for Petitioner has strenuously tried to demonstrate that either the defects alleged are not there or even if they are there, they are insignificant. The Petitioner is trying to give reasons as to how the Form was maintained and if there are lacunae, what is the explanation.

12. The Full Bench of High Court of Gujarat in *Suo Motu Vs. State of Gujarat*, , considered effects of non maintaining records properly under this Act. It was held that criminal consequences are attracted and there can also be suspension of the registration. Para 8 of the Judgment reads as under:-

8. It needs to be noted that improper maintenance of the record has also consequences other than prosecution for deemed violation of section 5 or 6. Section 20 of the Act provides for cancellation or suspension of registration of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in case of breach of the provisions of the Act or the Rules. Therefore, inaccuracy or deficiency in maintaining the prescribed record shall also amount to violation of the prohibition imposed by section 6 against the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and expose such clinic to proceedings u/s 20 of the Act. Where, by virtue of the deeming provisions of the proviso to sub-

section (3) of section 4, contravention of the provisions of section 5 or 6 is legally presumed and actions are proposed to be taken u/s 20, the person conducting ultrasonography on a pregnant woman shall also have to be given an opportunity to prove that the provisions of section 5 or 6 were not violated by him in conducting the procedure

...

It would also be improper and premature to expect or allow the person accused of inaccuracy or deficiency in maintenance of the relevant record to show or prove that provisions of section 5 or 6 were not violated by him, before the deficiency or inaccuracy were established in court by the prosecuting agency or before the authority concerned in other proceedings.

? In that Judgment of Full Bench, mentioned above, opinion (iv) recorded in Para 9, is as under:-

(iv). Deficiency or inaccuracy in filling Form F prescribed under Rule 9 of the Rules made under the PNDT Act, being a deficiency or inaccuracy in keeping record in the prescribed manner, it is not a procedural lapse but an independent offence amounting to contravention of the provisions of section 5 or 6 of the PNDT Act and has to be treated and tried accordingly. It does not, however, mean that each inaccuracy or deficiency in maintaining the requisite record may be as serious as violation of the provisions of section 5 or 6 of the Act and the Court would be justified, while imposing punishment upon conviction, in taking a lenient view in cases of only technical, formal or insignificant lapses in filling up the forms. For example, not maintaining the record of conducting ultrasonography on a pregnant woman at all or filling up incorrect particulars may be taken in all seriousness as if the provisions of section 5 or 6 were violated, but incomplete details of the full name and address of the pregnant woman may be treated leniently if her identity and address were otherwise mentioned in a manner sufficient to identify and trace her.

13. It is clear that it would be premature to accept explanations regarding inaccuracies or deficiencies before trial takes place. It is further apparent that if the lapse is insignificant, the benefit would go to the accused at the time of sentence, but claiming that deficiencies in Form F and keeping Records are insignificant, cannot be reason to claim that no offence is there and to discharge the accused.

14 (A). Reference needs to be made to the case of Dr. Sujit Govind Dange Vs. State of Maharashtra and Others, . In that matter Division Bench of this Court held that any deficiencies noticed in maintaining the record, in specially Form F, attracts the provisions of the Act.

(B). The Division Bench of this Court considered the objects and reasons of the Act and as to how the Act was necessary to control menace of female foeticide. In Para 29, while considering Section 4 of the Act, it was observed with reference

to Rule 9, as under:-

29. Considering the object of the Act, the maintenance and preservation of records as per rule 9 is an important statutory duty cast upon the person (Doctor) conducting ultra sonography on a pregnant woman and, therefore, any deficiency or inaccuracy found in this regard amounts to contravention of the provisions of section 5 or 6 of the Act unless contrary is proved by the person (Doctor) conducting such ultra sonography.

(C). In that matter also arguments were raised that the discrepancies were minor in nature or that they were only inaccuracies. The Hon''ble Division Bench in Para 30 held as under:-

30. It is important to note that in order to prohibit abuse of these prenatal diagnostic techniques, the Legislature has incorporated a proviso to sub-section (3) of section 4 of the Act which stipulates that any deficiency or inaccuracy found in maintaining and preserving complete record in a manner prescribed by the person conducting ultrasonography on a pregnant woman shall amount to contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography. This provision, in our view, is completely consistent with the objectives of the Act and has been introduced to prohibit abuse of the pre-natal diagnostic techniques by the person conducting ultra sonography on a pregnant woman.

...

The contention of the petitioner that the discrepancy was of a minor nature is wholly misconceived. Neither the provisions of the Act nor that of the Rules provide or define minor or major deficiencies or inaccuracies. On the other hand, it requires strict compliance of every provision of the Act and the Rules. Considering the objectives to be achieved, strict punishment is provided for violating the conditions prescribed under the Act. The contentions canvassed by the petitioner, in this regard, therefore, are devoid of substance and are rejected.

(D). With reference to Sub-section (3) of Section 20 of the Act, the Hon''ble Division Bench recorded in Para 39, as under:-

The observations made by the Division Bench in Malpani Infertility Clinic Pvt. Ltd. and Others Vs. Appropriate Authority, PNDDT Act and Others, clearly show that the Division Bench in view of the fact that prosecution was launched against the petitioner in the said case, it was held to be sufficient reason for the authorities to take recourse to sub-section (3) of Section 20 of the Act. In the instant case, the Petitioner having admitted the existence of deficiency and inaccuracy in keeping and maintaining the record including form "F" has resulted in contravention of the provisions contained in section 5 or 6 and, therefore, would amount to an offence and can be treated to be sufficient reason for the Appropriate Authority to invoke the provisions of sub-section (3) of section 20 of the Act, in the larger public interest and, therefore, the action of suspension of

registration of the Genetic Centre of the petitioner is sustainable in law till such time contrary is proved by the petitioner.

(E). Para 38 of the Judgment of the Division Bench recorded that:-

38. Rule 9(1) requires that every Genetic Counselling Centre, Genetic laboratory, Genetic Clinic, etc., shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedure or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test. Sub-rule (4) of rule 9 stipulates the record to be maintained by every Genetic Clinic, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form "F". In the instant case, the petitioner has admitted existence of discrepancies, irregularities in maintenance of Form "F" which has undoubtedly resulted in causing deficiency or inaccuracy in maintaining and preserving the record and, therefore, as per proviso to sub-section (3) of section 4 of the Act, resulted in contravention the provisions of section 5 or 6 of the Act and would amount to an offence, unless contrary is proved by the petitioner who has conducted such ultrasonography test.

15. Keeping in view the observations of the Hon"ble Division Bench in the case of "Sujit Govind Dange", mentioned above, there remains no doubt that deficiencies or inaccuracies in the maintaining of record and Form F attract the provisions of Section 5 or 6 of the Act. I am bound by the Judgment of the Division Bench of this Court.

16. When the complaint has been filed under this Act showing the inaccuracies and deficiencies in the keeping of record, and complainant has documents to support disclosing sufficient grounds to proceed in the light of provisions of this Act and Rules, this Court cannot, before holding of the trial, sit in Judgment whether or not the Record has been kept properly; or Form F concerned has been properly filled or improperly filled; or whether or not the deficiencies pointed out are serious or insignificant. When complaint has been filed pointing out deficiencies or inaccuracies, before trial it would not be proper for this Court to consider the arguments that what is pointed out is no deficiency or no inaccuracy. It would be prejudging the matter. As per Proviso of Section 4(3) "any" deficiency or inaccuracy in keeping of complete record "shall amount to contravention" of Section 5 or 6 "unless contrary is proved." Naturally, the contrary can be "proved" only at the trial. Appropriate Authority under the Act is Public Servant acting in discharge of official duty and has to act with responsibility. Keeping in view the Judgments discussed above, in such serious matters, it would be inappropriate to interfere when prima facie case is made out.

17. It cannot be said, at present, that there is no sufficient ground for proceeding. Keeping in view Aims and Objects of the Act and Scheme of the Act and Rules referred above and stringent and specific provisions not tolerating any

(means-any) deficiency or inaccuracy in keeping complete records, I am unable to accept the explanatory arguments in defence or to invoke writ jurisdiction, inherent power or revisional jurisdiction to quash the proceedings at the threshold when sufficient grounds to proceed are made out in the complaint.

? For reasons mentioned, arguments in favour of State have substance, and submissions for Petitioner to quash process or Complaint need to be discarded. Defences being raised, can be considered at the time of trial. The Petition stands rejected.