
(2016) 12 BOM CK 0024

In the Bombay High Court

Case No : Criminal Application No. 2574 of 2014

Dr. Udaysingh S/o Mansingh Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 23, Section 28, Section 29, Section 4(3), Section 5, Section 6

Citation : (2017) ALLMRCri 23 : (2017) 2 BomCR(Cri) 393 : (2017) 2 MhLJ 232 : (2017) 1 MhLJCri 196

Hon'ble Judges : Mr. Z.A. Haq, J.

Bench : Single Bench

Advocate : Mr. A.R. Kale, A.P.P, for the Respondent No. 1 /State; Mr. K.C. Sant, Advocate, for the Applicant; Mr. S.C. Swami & Ms. S.L. Pansambal, h/f Mr. V.D. Gunale, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Z.A. Haq, J. (Oral) - Heard Mr. K.C. Sant, learned Advocate for the Applicant, Mr. A.R. Kale, learned A.P.P. for non applicant No. 1 ? State and Mr. S.C. Swami & Ms. S.L. Pansambal holding for Mr. V.D. Gunale, learned Advocate for non-applicant No. 2.

2. Rule. Rule made returnable forthwith.

3. The applicant has approached this Court praying that the Judgment passed by the Sessions Court dismissing the Revision filed by the applicant be set aside and the order passed by the learned Magistrate framing charge against the applicant for the offences u/ss 4 (3),5,6,29 read with Section 28 of the Pre-conception and Pre - natal Diagnostic Techniques [Prohibition of Sex Selection] Act, 1994 [hereinafter referred as "PC & PNDT Act, 1994] and under Rule 9 (1) (4) (10) (1-A) of the Pre-conception and Pre - natal Diagnostic Techniques [Prohibition of Sex Selection] Rules, 1996 [hereinafter referred as "PC & PNDT Rules, 1996] be set aside.

The copy of the order passed by the learned Magistrate in R.C.C. No. 583/2011 on 10/03/2014 is not on record. The learned Advocate for the petitioner sought liberty to place the copy of the above order on record as Exh. H-1. Liberty granted subject to depositing " 2,000/- [Rupees Two Thousand] with the High Court Legal Services Sub- Committee, Aurangabad and producing receipt on record of this application within 2 weeks from today.

4. The non-applicant No. 2 ? Appropriate Authority filed Complaint before the Chief Judicial Magistrate u/s 4 (3),5,6,29 read with Section 28 of the PC & PNDT Act, 1994 and under Rule 9 (1) (4) (10) (1-A) of the PC & PNDT Rules, 1996 read with Sections 23 and 25 of the PC & PNDT Act, 1994 alleging that when the complainant along with some other officials visited the hospital of the applicant on 08/09/2011, where the applicant had been running a Sonography centre, following deficiencies were found :

[i] "F" forms maintained by the applicant were incomplete.

[ii] In December, 2010, 13 "F" forms were not signed by the applicant.

[iii] The declarations in "F" forms were not signed by the applicant.

[iv] Signatures of pregnant women, whose sonography was conducted were not taken on the "F" forms.

[v] The name and registration of the applicant was not found on the "F" forms.

[vi] In the "F" forms of the period from January, 2010 onwards, column Nos. 4 and 10 were not properly filled up and the number of living children of the patient were not mentioned and reasons for conducting sonography were not mentioned.

The complainant contended that the accused is liable for prosecution and conviction for the offences as mentioned in the complaint.

5. The learned Magistrate, by the order passed on 10/03/2014 found that the complainant had made out prima facie case for framing of charge against the accused for the offences as mentioned in the complaint. This order was challenged by the applicant/accused before the Sessions Court in Revision, which is dismissed by the impugned Judgment.

6. Mr. K.C. Sant, learned Advocate for the Applicant has submitted that the allegations levelled against the applicant are not correct and the complaint came to be filed directly without giving notice and, therefore, the applicant is deprived of the opportunity of pointing out to the Appropriate Authority that the allegations against him are not correct. The applicant has placed on record the copies of "F" forms which are submitted on-line to the District Administration, Jalgaon and the copies of the "F" forms maintained by the applicant at his hospital are also placed on record.

7. On going through the documents ["F" forms], I find that name and address of

the clinic is given in column No. 1 of the form and registration number is given in column No. 2 of the form. Similarly, column No. 4 is also filled up and number of children [male and female] is also shown in the form. Except in the form of Seema Patil [at page No. 22 of the paper book], in all other forms, column No. 10-D is filled up and the reason for conducting sonography is mentioned as verification of "foetal wellbeing". In the copies of "F" form maintained by the applicant and kept at his clinic, it is found that the signature of the applicant is there below declaration and in some forms there is no signature of the applicant.

8. In the above facts, it is required to be seen whether the deficiency in filling up of/maintaining the "F" form is of such a nature that the applicant is liable to face prosecution for it. The PC & PNDT Act, 1994 is enacted to prohibit sex selection before or after conception and to regulate the pre-natal diagnostic techniques for the purpose 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 and for matters connected therewith or incidental thereto. The Act provides for the conditions under which the pre-natal diagnostic techniques can be used by the registered institutions.

9. Considering the object of the Act and the contents of form "F" which are required to be filled up and maintained by the Gynecologist/Radiologist/registered medical practitioner performing the diagnostic procedures, it can not be disputed that the filling up and maintenance of form "F" is mandatory. However, in the present case, the point is whether a bona fide mistake or deficiency on the part of the Gynecologist or Radiologist or registered medical practitioner can be said to be of such a nature that the concerned Gynecologist or Radiologist or registered medical practitioner is liable to face prosecution.

10. In the complaint filed by the Appropriate Authority, the only allegations are that there is some deficiency in maintaining "F" forms in respect of some patients. There is no averment in the complaint that the omission in the "F" forms is deliberate or the accused is indulging in conducting pre-natal diagnostic techniques for determination of sex of foetus.

11. More-over, as recorded earlier, the deficiencies as mentioned in the complaint, in-fact do not exist. In some of the "F" forms, though the signature of the applicant is not found on "F" form, it is not disputed by the Appropriate Authority that the "F" forms are submitted through and in the name of the clinic which is registered in the name of the applicant. On some of the "F" forms, the signature of the applicant is found below the declaration of Doctor conducting Ultra Sonography. The accusations are that the applicant has not signed below column No. 19 where also he is required to sign. The form "F" is a composite form and below column No. 19 is the declaration which is required to be signed by the patient and below it is the declaration which is required to be signed by the Doctor conducting Ultra sonography. As the signature of the applicant is found on most of the forms below the declaration, only because the applicant has

not signed below column No. 19, it can not be said that because of the omission, he is liable to face prosecution.

12. After examining the matter, I find that the complainant has not been able to establish on record that the charges for the offences mentioned in the complaint are required to be framed against the applicant and that the applicant is liable to be prosecuted for those offences.

13. I feel that the things could have been different, had the Appropriate Authority issued show cause notice to the applicant asking for his explanation and the necessity to file complaint should have been examined after receiving reply from the applicant.

14. In my view, the order passed by the learned Magistrate framing Charge against the applicant and the Judgment passed by the Sessions Court dismissing the Revision Application filed by the applicant are unsustainable.

Hence, the following order :

(i) The Judgment passed by the Additional Sessions Judge in Misc. Criminal Revision No. 80/2014 on 11/04/2014 is set aside.

(ii) The Order passed by the Judicial Magistrate, First Class, Jalgaon on 10/03/2014 in R.C.C. No. 583/2011 is set aside.

(iii) The Complaint filed by the non-applicant No. 2 vide R.C.C. No. 583/2011 is dismissed.

(iv) Rule made absolute in the above terms.

(v) In the circumstances, the parties to bear their own costs.

(vi) The certified copy of this Judgment shall be given to the applicant only after the applicant produces on record the receipt showing deposit of Rs.2,000/- as ordered.