
(2014) 02 BOM CK 0174

In the Bombay High Court

Case No : Criminal Writ Petition No. 26 of 2014

Dr. Yogita Vinay Theng

APPELLANT

Vs

Appropriate Authority

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 — Section 28

Citation : (2015) 1 BomCR(Cri) 537

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : D.B. Thoke, for the Appellant; P.P. More, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Thipsay, J.—Heard Mr. D.B. Thoke, the learned Counsel for the petitioner. Heard Mr. P.P. More, the learned Additional Public Prosecutor for the respondent. Rule. By consent, Rule made returnable forthwith. The learned Additional Public Prosecutor waives service on behalf of the respondent. By consent, heard finally forthwith.

2. The petitioner is the accused in Regular Criminal Case No. 220/2011, pending in the court of Judicial Magistrate (First Class), Chalisgaon [District: Jalgaon]. The case is in respect of offences punishable under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 [For short, "PCPNDT Act"] and the Rules framed thereunder. Evidence before charge is being adduced. Seven witnesses for the prosecution, before charge, have been examined.

The complaint has been filed by one Dr. Baviskar. In the course of cross examination of the prosecution witnesses, the petitioner (hereinafter referred to as the "accused") raised some questions about the authority of Dr. Baviskar to file the complaint in question. It is because, apparently, no document showing

that he was authorized to file the complaint in question had been produced before the trial court till then. In the cross examination of the prosecution witness no. 6 - one Dr. Lalikar-it was put to him that, "his claim that Dr. Baviskar had been appointed as the proper authority was not true". In the cross examination, on being questioned, he submitted that "if time would be given to him, he would produce the document/ record showing that Dr. Baviskar had been appointed as appropriate authority" - as contemplated under Clause (a) of Section 2 of the PCPNDT Act. The accused therefore, required production of the said document by the said witness and, therefore, made an application (Exhibit 68) to the court, praying that as agreed by the PW 6, he be directed to produce the relevant document/record. Now, this application was rejected by the learned Magistrate by an order dated 6-1-2014.

Being aggrieved thereby, the accused has filed the present petition invoking the constitutional jurisdiction of this Court.

3. I have gone through the impugned order. The reasoning of the learned Magistrate is found in para 5 of the order, and it is worth reproducing the said para here:

The present case is for evidence before charge. The prosecution have examined seven witnesses. Hence, the stage of the proceeding is pertaining to the evidence of prosecution. The defence evidence is yet to begin. The charge is yet to be framed. It is for the prosecution to put forth prima facie evidence on record. Hence, at this juncture, I do not find any propriety in ordering production of the document on the request of the accused considering the above stage. Hence, I pass the following order:

ORDER

The application stands rejected.

4. Section 28 of the PCPNDT Act puts restriction on the power of the court to take cognizance of an offence under the said Act and lays down that it can take cognizance only on a complaint made by a specified person-as mentioned in the said provision. The complaint in question has been made by one Dr. Baviskar claiming to be an appropriate authority as contemplated under the said Act. Therefore, the evidence showing that he was an appropriate authority was extremely relevant and would go to the root of the matter. Therefore, the observation of the learned Magistrate that, at that juncture, "he did not find any propriety in ordering production of the document" is rather strange.

The improper approach of the learned Magistrate becomes more apparent if it is kept in mind that the prayer to call for the document was not made for tendering any such document in evidence as a part of the defence of the accused, but as and by way of challenge to the claim of Dr. Lalikar (PW 6). The prosecution was ready to produce such a document. Dr. Lalikar, in his evidence, had stated that he would produce the same if time would be given to him, meaning thereby, that

he did not possess the document with him at the time when the question was put to him. The reasoning of the learned Magistrate seems to be even if challenged, and even if the prosecution was ready to produce a document supporting its version, the court did not want to know whether the complaint had indeed been filed by a specified person as per the requirements of Section 28 of the PCPNDT Act. The view that till the framing of the charge such evidence was not required was absolutely erroneous. When the defence wanted the document to be produced, when the prosecution had no objection whatsoever for its production, the insistence of the learned Magistrate that it ought not to be produced, is rather strange.

5. When this petition came up for admission on the last date, the learned Additional Public Prosecutor was directed to take instructions as to how much time it would require for the prosecution witness No. 6 to produce the document pertaining to the appointment of Dr. Baviskar as an appropriate authority. Today, the learned Additional Public Prosecutor, on instructions, states that it would not take any time at all, which is, even otherwise obvious, as, if any such document indeed exists, it can be produced by the prosecution at any time.

6. The order passed by the Magistrate is totally erroneous and perverse. The same needs to be interfered with by exercising the constitutional jurisdiction of this Court. The petition is allowed in terms of prayer "C". Rule is made absolute accordingly.