
(2015) 03 P&H CK 0334

In the Punjab And Haryana At Chandigarh

Case No : Criminal Misc. Nos. M-27591 and M-5345 of 2013 (O&M)

Gagandeep and Others

APPELLANT

Vs

District Appropriate Authority-cum-CMO Ambala and Others

RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 17, 17(2), 17(3), 17(5), 18

Citation : (2015) 2 RCR(Criminal) 986

Hon'ble Judges : Lisa Gill, J

Bench : Single Bench

Advocate : H.C. Arora and Hemen Aggarwal, for the Appellant; Pawan Girdhar, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Lisa Gill, J.

1. This order shall dispose of CrI Misc. No. M-27591 of 2013 (Gagandeep v. District Appropriate Authority-cum-CMO, Ambala and others) and CrI. Misc. No. M-5345 of 2014 (Pankaj Kumar v. State of Haryana). Petitioners in both the above noted cases are accused in complaint No. 47 of 2012, under Sections 3/4/5/6/18/23 of the Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter called as the "PC-PNDT Act"). They seek quashing of the complaint as well as summoning order dated 21.01.2013 passed by the learned Judicial Magistrate First Class, Ambala whereby they have been summoned to face trial for offence punishable under Section 23 of the PC-PNDT Act for violation of provisions of Sections 4, 5, 6, 18 of the PC-PNDT Act.

2. The aforementioned complaint has been filed by the District Appropriate Authority-cum-Chief Medical Officer, Ambala through Dr. Sangeeta Goyal, Deputy CMO-cum-Nodal Officer, Ambala. As per the complaint, Dr. B.B. Lala, SMO, CHC Barara received information from reliable sources that a medical practitioner,

namely, Jaspal Singh is actively involved in sex determination racket at Ambala. Dr. B.B. Lala took the aid of two SMS (Shakshar Mahila Samooh) Pardhan, namely, Mrs. Pooja Rani of village Ugala and Ms. Rajni Sharma of village Adhoi. He was informed by Ms. Rajni Sharma on 08.07.2012 that she was asked by Jaspal Singh to come at Ambala on 09.07.2012 alongwith the pregnant lady for sex determination of the foetus. Subhash Chander, Multi Purpose Health Worker (Male), Civil Hospital, Barara was directed to hire a vehicle for bringing the abovementioned ladies on 09.07.2012 from their respective villages to Ambala. A request was forwarded to the District Appropriate Authority, Ambala-cum-CMO to constitute a team of officials for unearthing the said racket. A team consisting of Dr. B.B. Lala, SMO, CHC Barara and Dr. Pawan Kumar, Medical Officer, PHC Majri was constituted by the District Appropriate Authority. Mrs. Pooja Rani was used as a decoy patient seeking sex determination from petitioner - Pankaj Kumar Gupta and co-accused Jaspal Singh. Ms. Rajni Sharma in the presence of Dr. B.B. Lala intimated Jaspal Singh that they had reached Kalka Chowk, Ambala. They were asked to wait at the Bus Stop Kalka Chowk, Ambala by Jaspal Singh. Accordingly, they went to Bus Stop Kalka Chowk, Ambala. After an hour, a person supporting a turban came on a motorcycle and asked them to sit on the motorcycle. He took them to Manav Chowk, Ambala City where TATA Indica car bearing registration No. PB-39-F-0608 arrived. Ms. Rajni Sharma and Mrs. Pooja Rani (decoy patient) were asked to board the said car. The ladies were taken to village Sonda near Khera. Ms. Rajni Sharma and the decoy patient were taken to a house. On seeing the raiding party, driver of the Indica car tried to run away. The said driver was apprehended on the spot and identified as Gagandeep i.e., the petitioner. On raiding the premises, two ladies alongwith two other persons were found sitting in one room. One of the ladies disclosed her name to be Manjinder Kaur wife of Kuldeep Singh, resident of Banur and revealed that she had come to the premises for sex determination of the foetus she was carrying. Smt. Pooja Rani, the decoy patient was also sitting there. Petitioner - Pankaj Kumar was found using an unregistered Portable Ultrasound machine. The fourth person, Jaspal Singh owner of the house where the illegal clinic was set up was also found present. Portable ultrasound machine make Philips was recovered alongwith other articles. Petitioner - Pankaj Kumar is averred to have been running one Sanjeevni Lab near Bara Thakur Dwara, Ambala City. Raid was conducted on the said lab as well. It was found to be running illegally.

3. On the basis of the incriminating evidence recovered and violation of the provisions of Section 3, 4, 5, 6, 18 and 23 of the PC-PNDT Act being revealed, the present complaint was filed. FIR No. 143 dated 01.07.2012 was also lodged.

4. Learned counsel for the petitioners vehemently contend that the present complaint itself is not maintainable having been filed by a person not authorised to do so under the PC-PNDT Act. While referring to Section 28 of the PC-PNDT Act, it is submitted that it is only the appropriate authority which is competent to file the complaint. It is urged that in the present case, complaint has been filed by Dr. Sangeeta Goyal. As per Section 17(3) of the PC-PNDT Act, an appropriate

authority has to be a Committee consisting of three members. State Government has to appoint one or more appropriate authority/authorities for whole or part of the State for the purposes of PC-PNDT Act.

5. Sh. H.C. Arora while referring to decision dated 18.09.2013 of this Court in Civil Writ Petition No. 21565 of 2011 (Help Welfare Group Society v. The State of Haryana and others) contends that an appropriate authority necessarily has to be a three member body to ensure compliance of Section 17(5) of the PC-PNDT Act. State of Haryana had designated Civil Surgeon as the Appropriate Authority vide notification dated 25.08.2003. This Court has held that a multi-member body of three members would far better serve the ends rather than the Civil Surgeon alone being the appropriate authority. It is submitted that in view of this decision all actions taken under the previous notification have to be set at naught. Proceedings cannot continue against the petitioners on this ground alone.

6. Sh. Hemen Aggarwal while referring to notification dated 14.09.2009 submits that notification dated 24.10.1997 itself was not published in the official gazette. Vide notification dated 24.10.1997, Civil Surgeon was nominated to be the Appropriate Authority and an Advisory Committee was constituted to assist or advise the Appropriate Authority. Therefore, in view of the mandatory provision of Section 17 of the PC-PNDT Act, which provides that the appropriate authority can be appointed by the State Government only by notification in the official gazette, it has to be held that the notification dated 24.10.1997 itself is a nullity not having been published in the official gazette and all actions taken thereunder are illegal, null and void.

7. It is additionally argued that even on bare perusal of the complaint, no offence is made out against the petitioners as detailed in the complaint.

8. Learned counsel for the State while opposing this petition has submitted that appointment of District Appropriate Authority for the whole of State of Haryana was made vide notification dated 24.10.1997 (Annexure R1 with affidavit dated 23.04.2014 of Dr. B.B. Lalla). When the procedural defect of this notification not having been published in the official gazette came to light, an ordinance was issued vide notification 21.07.2009 (Annexure R2) whereby all the acts, proceedings or the things done or actions taken or which maybe done or taken by the said Appropriate Authority were declared to be valid. Subsequently, this ordinance was superseded by the PC-PNDT, Haryana Validation Act, 2009 (Haryana Act No. 19 of 2009) published on 14.09.2009 (Annexure R3).

9. It is further informed that vide notification dated 07.11.2013, District Appropriate Authority has been constituted as a multi-member Authority consisting of three members i.e., Civil Surgeon as the Chairperson, District Programme officer Women and Child Development Department and District Attorney as its members. This has been done pursuant to order dated 18.09.2013 passed in CWP No. 21565 of 2011.

10. It is submitted that the role of the petitioners is clearly mentioned in the

complaint. Trial in this case is at its fag end. Defence evidence has also been led. It is due to interim order dated 22.08.2013 passed by this Court that the final order had not been passed. Therefore, no case is made out for the quashing of the above said complaint and summoning order.

11. I have heard learned counsel for the parties and gone through the file.

12. Contention of learned counsel for the petitioners that all actions taken or proceedings initiated by the Appropriate Authority since the year 1997 are liable to be set aside, is not tenable. PC-PNDT Act was promulgated in order to address a social evil i.e., pre-natal diagnostic techniques for sex determination of foetus. Female foeticide pursuant to sex determination is a reality to which eyes cannot be closed.

13. It is undisputed that in compliance of Section 17(2) of the PCPNDT Act, Appropriate Authority had been notified to be the Civil Surgeon by the State of Haryana. Though it was not published in the official gazette, necessary steps were immediately taken when this procedural defect came to light in the year 2009. Ordinance dated 17.07.2009 as well as Haryana Validation Act No. 19 of 2009 dated 28.08.2009 were passed and were duly notified on 21.07.2009 and 14.09.2009, respectively. To say that all acts undertaken earlier would be set at naught due to non-publication of 1997 notification in the official gazette, is not justifiable. It cannot be said to be a flaw which is fatal. At best, it can be termed to be an irregularity which has been set at right.

14. Furthermore, direction of this Court that the Appropriate Authority should a multi-member body rather than the Civil Surgeon alone, cannot be stretched to mean that all acts, proceedings or actions undertaken or done by the Appropriate Authority as notified earlier would be set at naught or rendered illegal. This Court in CWP No. 21565 of 2011 specifically afforded time to the State of Haryana for taking necessary steps to rectify the same. Admittedly, the multi-member Appropriate Authority has been notified.

15. Specific allegations of conducting illegal sex determination of pregnant women are levelled against petitioner - Pankaj and petitioner - Gagandeep is alleged to be actively participating in the same by ferrying the pregnant women for conduct of the said tests. It cannot be said at this stage that a perusal of the complaint does not disclose any offence against the petitioners or that continuance of the proceedings are an abuse of the process of law. However, no opinion is expressed on the merits of the case, lest prejudice be caused to either side.

16. It can also not loss sight of that trial of this case is almost over. Entire evidence has already been led. Interference at this stage is neither warranted nor justified. Therefore, keeping in view the facts and circumstances of the case, both petitions seeking quashing of complaint as well as summoning order, are hereby dismissed.

Any observations made here-in-above shall not be construed to be a reflection on merits of the case and shall have no bearing on trial.