

(2018) 06 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : Cr.MP(M) No. 458 of 2018

Health Department

APPELLANT

Vs

Dr. Shobha Thakur.

RESPONDENT

Date of Decision : 26-06-2018

Acts Referred:

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection)
Rules, 1996 — Rule 12

Citation : (2018) 06 SHI CK 0031

Hon'ble Judges : SURESHWAR THAKUR, J

Bench : Single Bench

Advocate : Vikrant Chandel, Hemant Vaid, Y.S. Thakur

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.

1. The instant application is directed, against, the verdict recorded by the learned Judicial Magistrate, 1st Class, Court No.3, Hamirpur, District

Hamirpur, H.P. in Complaint Challan No. 38-1-2015.

2. The State being aggrieved therefrom, has, hence sought the leave of this Court, to, assail it. The relevant hereat provisions, of, Rule 12, of, The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996, are, extracted hereinafter:-

â??12. Procedure for search and seizure.- (1) The Appropriate Authority or any officer authorized in this behalf may enter and search at all

reasonable times and Genetic counseling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or

more independent witnesses for the purposes of search and examination of any record, register, document, book, pamphlet, advertisement, or any

other material object found therein and seal and size the same if there is reason to believe that it may furnish evidence of commission of an offence

punishable under the Act.

Explanation.- In these Rules-

(1) "Genetic Laboratory/Genetic Clinic/Genetic Counselling Centre" would include an Ultrasound Centre/Imaging Centre/nursing

home/hospital/institute or any other place, by whatever name called, where any of the machines or equipments capable of selection of sex before or

after conception or performing any procedure technique or test for pre-natal detection of sex of foetus, is used;

(2) "material object" would include records, machines and equipments; and

(3) "seize" and "seizure" would include "seal and sealing" respectively.

In, sub-section (3) whereof, a, specific mandate, is, cast upon the seizing authorities, to upon, the seized incriminatory materials, hence emboss thereon,

seal impression(s). Sub-section (3) of Rule 12, defines, "seize" to include seal and sealing respectively, thereupon it was imperative, for the seizing

officer, to, upon the seized incriminatory materials, hence emboss seal impression(s), (i) also, it was incumbent, upon, the prosecution to hence

produce, before the learned trial Court, the seized items, lodged, in carton boxes, , with embossing(s) thereon, of, seal impression(s). The aforesaid

manner, of, production, of, the seized property, with existence, of, seal impression thereon, was, imperative (a) for facilitating the learned trial

Magistrate concerned, to, dispel arousal, of, inferences, qua hence stratagem(s) of, invention, of, concoction(s), being rather deployed by the seizing

officer, in his seizing, the, carton boxes (b) and also was imperative, for, enabling the learned trial Magistrate, for invincibly, concluding, qua the seized

incriminatory materials, as carried in carton boxes, being related to seizure thereof, as, made through memos. However, as apparent, on, a reading of

paragraphs 66, and, 67 of the impugned verdict, the seized incriminatory materials, though, were lodged, in, carton boxes, yet, theirs remaining

unembossed, with, seal impression(s), rather, with the carton boxes being sealed, with a tape, thereupon the aforesaid manner, of, sealing the seized

carton boxes, carrying therewithin, the seized materials, hence is in complete blatant infringement, of, the prescribed statutory manner, qua their

sealing. In aftermath, the seizure(s), are, both fragile and unworthy, of, any credence.

3. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court, has appraised, the entire evidence on record, in

a wholesome and harmonious manner, apart therefrom, the analysis of the material on record by the learned trial Court, does not, suffer from any

perversity or absurdity of mis-appreciation and non-appreciation of evidence on record. Consequently, the leave to appeal is declined. The impugned

verdict is affirmed and maintained.