

(2022) 03 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 621 Of 2022

Jitender

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Pre Natal Diagnostic Techniques Rules, 1996 — Rules 11(1)(2), 11(2), 12, 12(2)
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 120B
Pre Natal Diagnostic Techniques (Regulation And Prevention Of Misuse) Act, 1994 —
Section 2(d), 3, 4, 5, 6, 18, 23, 29, 30

Citation : (2022) 03 P&H CK 0020

Hon'ble Judges : Sant Parkash, J

Bench : Single Bench

Advocate : Shaveta Sanghi, Aditya Sanghi, Amreek Singh Narwal

Final Decision : Dismissed

Judgement

Sant Parkash, J

By way of filing the instant petition under Section 482 Cr.P.C., the petitioner has sought indulgence of this Court in setting aside the order dated 03.12.2020 (Annexure P-1) passed by learned Sessions Judge, Narnaul and order dated 10.09.2020 (Annexure P-3) passed by learned JMIC, Narnaul, whereby both the Courts below have dismissed the revision as well as application respectively, of the petitioner for release/temporary release of his vehicle (make Car I-20) bearing registration No.RJ-02-CE-3421 on superdari in case FIR No.225 dated 19.08.2020, registered under Sections 34, 120-B of IPC, Sections 4, 3, 5, 6, 18 and 29 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short 'the P.N.D.T. Act') at Police Station Nangal Chaudhri, District Mahendergarh, Haryana.

Brief facts leading to the instant case are that on 19.08.2020, District Appropriate Authority constituted a raiding party, out of which one member

contacted the petitioner on his mobile phone asking for sex determination of foetus of her pregnant sister. The petitioner agreed and asked them to pay a sum of Rs.30,000/- for the same. The aforesaid raiding party along with currency notes and shadow witness was sent to Village Bhungarka, where the petitioner along with co-accused was found sitting in a car and after receiving money from the said raiding party, a test was done by the accused persons known as U.S.G. through a Wi-fi connected probe machine already lying in the car and informed that the report will be provided within one hour. At this, the raiding party apprehended the petitioner along with co-accused and recovered the currency notes along with other material objects lying in the car being used for sex determination including a wireless probe. The petitioner and co-accused were arrested along with material objects and the vehicle in question was taken into police custody. On registration of a formal FIR with the police by District Appropriate Authority, the police took into possession the vehicle in question, currency notes of Rs.30,000/-, one wireless probe with data cable, one gelly bottle, one mobile phone make Apple having Sonographic image and two mobiles make Vivo and initiated further investigations. The petitioner, being registered owner of the vehicle in question, moved an application for the release of the same, but the same was declined vide order dated 10.09.2020 passed by learned JMIC, Narnaul (Annexure P-3). Feeling aggrieved of the said order, the petitioner preferred a revision, which was also dismissed vide order dated 03.12.2020 passed by learned Sessions Judge, Narnaul (Annexure P-1). Now, the petitioner has come up before this Court assailing the orders dated 03.12.2020 and 10.09.2020 (Annexures P-1 and P-3 respectively) for release of the vehicle in question, on superdari.

Learned counsel for the petitioner contends that as per the definition of Genetic Clinic as defined in Section 2(d) of the P.N.D.T. Act, vehicle in question can not be termed as Genetic Clinic as during the course of police remand, the accused admitted that they were not determining the sex of the foetus rather they were just cheating people to earn money from them. It is further contended that using the power vested by virtue of Section 3 of the P.N.D.T. Act, although the authorities can regulate the Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics, the provision of search and seizure of records etc. is defined under Section 30 of the P.N.D.T. Act, which nowhere authorizes the appropriate authority to confiscate vehicle and only authorizes the appropriate authority to examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same, if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under the aforesaid Act. The learned revisional Court has wrongly interpreted the above provisions and while exercising its discretion, took the view against the release of vehicle relying on Rules 11(2) and 12 of the P.C. and P.N.D.T. Rules, 1996.

Relying upon the aforesaid contentions and further that there is no provision under the P.C. and P.N.D.T. Act to confiscate the vehicle in question and no such

proceedings have been initiated, learned counsel submits that the said vehicle be released on superdari as the same will lose its use worthiness if it is being kept in police station. It is further submitted that the petitioner is ready to furnish an undertaking before the Court with regard to not selling or changing the ownership of the said vehicle until the decision of the main case.

Controverting the aforesaid contentions made on behalf of the petitioner and placing reliance on Section 2(d) of the P.C. and P.N.D.T. Act and further on Rule 11(2) and 12 of the P.C. and P.N.D.T. Rules, 1996, learned State counsel submitted that every machine, material object or equipment seized under the P.N.D.T. Act for violation of the said Act, is liable for confiscation straightaway. The vehicle in question also comes within the ambit of genetic clinic, which is required to be sealed and seized being a material object and is subject to confiscation. The release of the same will defeat the very purpose of the P.N.D.T. Act when it is also alleged that the petitioner has been apprehended second time committing the same offence of illegal sex determination.

After having heard learned counsel for the parties and having gone through the material on record, this Court is of the considered view that the impugned orders do not suffer from any illegality and the instant petition is liable to be dismissed.

It is apposite to mention here that the object of the P.C. and P.N.D.T. Act is to prohibit use of pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Pre-natal diagnostic techniques like sonography are useful for detection of sex. They can be used also for detecting disorders in the foetus.

A perusal of the impugned order dated 03.12.2020 would reveal that for the purpose of deciding the issue at hand and to determine whether the vehicle in question can be termed as a 'Genetic Clinic', Section 2 (d) of the P.C. and P.N.D.T. Act needs to be gone into, and the same read as under:-

"2(d) '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;

[Explanation- For the purposes of this clause, "Genetic Clinic" includes a vehicle, where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used.]"

It is clear from the above definition that 'Genetic Clinic' will include even a vehicle, where ultrasound machine or imaging machine or scanner is used and the vehicle in question, has rightly been termed as 'Genetic Clinic' as the same was being used for keeping the sex determination equipment and at the time of raid, the petitioner was found doing the illegal act of sex determination in the said vehicle only.

Further, for determining the issue of search, seizure and confiscation of the vehicle in question, reliance can be placed on Section 30 and Rules 11(1)(2) & 12 of the P.C. and P.N.D.T. Rules, 1996, which are reproduced as under:-

"30. Power to search and seize records, etc.- (1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other place, such Authority or any officer authorized in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority or officer considers necessary, such Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act. (2) The provisions of the Code of Criminal Procedure 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

xx

xx

xx

Rule 11. Facilities for inspection.- (1) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre, nursing home, hospital, institute or any other place where any of the machines or equipments capable of performing any procedure, technique or test capable of pre-natal determination of sex or selection of sex before or after conception is used, shall afford all reasonable facilities for inspection of the place, equipment and records to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf for registration of such institutions, by whatever name called, under the Act or for detection of misuse of such facilities or advertisement therefor or for selection of sex before or after conception or for detection/ disclosure or sex of foetus or for detection of cases of violation of the provisions of the Act in any other manner.

(2) The Appropriate Authority or the officer authorised by it may seal and seize any ultrasound machine, scanner or any other equipment capable of detecting sex of foetus, used by any organization if the organization has not got itself registered under the Act. These machines of such organization shall be confiscated and further action shall be taken as per the provisions of the Section 23 of the Act.

Rule 12 - Procedure for search and seizure:-

(1) The Appropriate Authority or any officer authorised in this behalf may enter and search at all reasonable times any Genetic Counselling 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 seize 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 equipment' and

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

A bare perusal of aforesaid statutory provisions, both in the Act and in the Rules, makes it abundantly clear that an ultra sonography test on a pregnant woman is considered to be an important part of a pre-natal diagnostic test or pre-natal diagnostic procedure. Section 30 confers powers upon the appropriate authority or authorized officer to seize or seal a "material object" like an ultrasound machine at any place suspected to be indulging in pre-natal diagnostic techniques such as an ultra sonography test on a pregnant woman for determination of sex. Further, the provisions of Rule 11, particularly sub-rule (2) thereof, conferring power to seal and seize ultra sound machines or other machines or equipments capable of detecting sex of foetus, sold to unregistered purchasers and explanation (2) to Rule 12 (material object would include records, machines and equipments) make it more than clear that the expression "any other material object" in Section 30 includes ultrasound machines, other machines and equipment capable of detecting sex of foetus or capable of use for sex selection. The case in hand is a case of illegal determination of sex of a foetus with illegal and unauthorized equipment that too in total disregard to the provisions of the Act that too for money consideration as the petitioner was apprehended on the basis of raid conducted after receiving the secret information, while doing illegal sex determination and tainted money was also recovered from his possession as taken by him from the decoy pregnant lady. Consequently, car in question comes within the ambit of 'genetic clinic' as it was being used for keeping sex determination equipment capable of determination of sex of foetus at the time of raid and as such, it was required to be sealed and seized being a 'material object' and was subjected to confiscation. As per the aforesaid rules, confiscation of the vehicle in question by the Appropriate Authority is very much justified as admittedly, it had not been registered under the P.C. and P.N.D.T. Act and was used for sex determination illegally and also furnish evidence for the commission of offence.

In view of the possibility of use of pre-natal diagnostic techniques for determination of sex and then for termination of pregnancy of unborn child, the

provisions of P.C. and P.N.D.T. Act are made, which should be observed and followed in letter and spirit while dealing with the matters like the one in hand. As per the provisions of the said Act and Rules coupled with directions for its implementation issued by Hon'ble Apex Court in the case of Centre for Enquiry into Health and Allied Themes (CEHAT) and others Vs. Union of India and others, (2001)5, SCC, 577 and reiterated in the subsequent case reported with the same name as (2003) 8, SCC, 398, every machine, material object or equipment seized under the Act for violation of the Act, is liable for confiscation straightaway. The vehicle in question was used against the said provisions of the Act and Rules leading to the abuse of process of law and therefore, its confiscation and consequent non-release is very much justified.

It is also taken in consideration that the petitioner has been apprehended second time committing the same offence of illegal sex determination and if the vehicle is released, the possibility of repeating the offence, thereby defeating the very purpose of the Act, can not be ruled out.

Keeping in view the aforesaid, this Court is of the opinion that the learned Sessions Judge rightly upheld the order dated 10.09.2020 passed by learned trial Court dismissing the application of the petitioner seeking release of the vehicle in question on superdari and dealt with all the involved issues in accordance with apt statutory provisions and therefore, no illegality can be found in the same.

In view of the above, no ground is made out for quashing the impugned orders dated 03.12.2020 and 10.09.2020 (Annexures P-1 and P-3 respectively) and the same are upheld by this Court. Accordingly, the present petition seeking quashing of the aforesaid impugned orders, is hereby, dismissed.