

(2015) 10 MP CK 0036

In the Madhya Pradesh High Court

Case No : Misc. Criminal Case No. 5967/09

Pooja Agrawal

APPELLANT

Vs

Shivbhan Singh Rathore and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 228, 397, 482

Penal Code, 1860 (IPC) — Section 188

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 23, 23(1), 25, 28, 28(1)(b)

Citation : (2015) 10 MP CK 0036

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Raju Sharma, for the Appellant; H.K. Shukla, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J—The petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C. to challenge the proceedings of Criminal Case No. 1248/2009 pending before Chief Judicial Magistrate, Bhind. The petitioner has also challenged the order of Revisional Court dated 7.8.2009.

2. Shri Raju Sharma, learned counsel for the petitioner submits that the petitioner is running an ultra sound clinic in the name and style of Divyam Ultrasound Centre at Bhind. The petitioner is a qualified Radiologist and Sonologist. The petitioner's clinic is duly registered under the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for brevity, the "Act of 1994"). Shri Sharma submits that respondent No. 1 is a habitual complainant. He preferred series of vague complaints against various doctors of Bhind. None of these complaints could fetch any result and allegations mentioned therein could not be proved. Attention of this Court is drawn on a compilation prepared and filed on 28.9.2015. By taking this Court to page 55, 68, 99, 107 and 108 of this compilation, it is argued that the

respondent No. 1 preferred various complaints before various authorities. No allegation of complainants could be established, which shows that he is habitual complainant and makes such complaint to harass the doctors/clinic operators. Shri Sharma further submits that a plain reading of complaint (page 68 of compilation) shows that the allegations mentioned against the petitioner are vague/ambiguous. As per the face value of the allegations itself, it can be safely said that no offence is made out against the petitioner. Putting it differently, by applying the acid test laid down by the Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , Shri Sharma submits that if allegations of the complainant are accepted on its face value, no offence of any nature is established against the petitioner. Thus, the Court below has committed an error in taking cognizance of such an unworthy complaint.

3. Shri Sharma also relied on Section 28 of the Act of 1994 to submit that it is condition precedent to submit a notice before the appropriate authority. Only after completion of 15 days time from the date of giving notice, the complaint could have been preferred. Shri Sharma submits that the notice dated 28.3.2008 makes it clear that it does not fulfill the requirement of Section 28(1)(b) of the said Act. Complainant has not disclosed the "alleged offence" in the said notice qua petitioner and, therefore, the complaint itself was not tenable. Shri Sharma read out the statement of complainant and his witness (page 93 and 94 of the compilation). On the strength of this, it is urged that the Court below has erred in taking cognizance of the complaint.

4. The next attack is on the revisional order. Shri Sharma has taken pains to submit that the revisional court has exceeded its jurisdiction. There was no occasion for the revisional court to act as a court of first instance. The revisional court was only required to examine the decision making process of the trial court. Putting it differently, Shri Raju Sharma submits that the revisional court has acted as a court of first instance and examined the entire material before it which is legally impermissible. Shri Sharma relied on various provisions of the Act of 1994 to submit that petitioner has not committed any offence whatsoever and courts below have mechanically taken cognizance against the petitioner. He relied on following judgments of Supreme Court in support of his contention:--

"(i) *State of Haryana and others Vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp .

(ii) *Daman Municipal Council and another, etc. Vs. M/s. Paramount Traders and others*, AIR 1992 SC 637 : (1992) 3 SCC 100 Supp .

(iii) *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, AIR 1998 SC 128 : (1998) CriLJ 1 : (1997) 8 JT 705 : (1997) 6 SCALE 610 : (1998) 5 SCC 749 : (1997) 5 SCR 13 Supp .

(iv) Sharad Kumar Sanghi Vs. Sangita Rane(2015) 2 JCC 1277 : (2015) 2 RCR(Criminal) 120 : (2015) 3 SCALE 126 .

(v) Monju Roy and Others Vs. State of West Bengal(2015) 5 AD (SC) 164 : (2015) 89 ALLCC 956 : (2015) 2 CALLT 9 : (2015) 2 CALLT 62 : (2015) 2 CCR 522 : (2015) 2 Crimes 340 : (2015) 2 DMC 327 : (2015) 2 JCC 1392 : (2015) 2 MLJ(Cri) 486 : (2015) 2 NCC 185 : (2015) 3 PLJR 272 : (2015) 3 RCR(Criminal) 154 : (2015) 5 SCALE 288 : (2015) 2 UC 1000 .

(vi) D.P. Gulati Vs. State of Uttar Pradesh and Others(2015) 127 CLA 205 : (2015) 2 JCC(NI) 129 : (2015) 2 RCR(Criminal) 515 : (2015) 4 SCALE 373 .

(vii) Rishipal Singh Vs. State of U.P., AIR 2014 SC 2567 : (2014) AIRSCW 3810 : (2014) 8 SCALE 298 : (2014) 7 SCC 215 .

(viii) K.K. Kuda Vs. Chief Enforcement Officer, Enforcement Directorate(2015) 3 AD 177 : (2015) 319 ELT 244 : (2015) 1 RCR(Criminal) 540 : (2015) 1 SCALE 56 : (2015) 2 SCJ 202 : (2015) 130 SCL 91 "

It is submitted that taking cognizance on a criminal complaint is a serious matter. On the basis of a vague complaint supported by two statements of witnesses alone, cognizance could not have been taken. Heavy reliance is placed on the judgment of Supreme Court in Pepsi Food (supra). It is submitted that the courts below have acted beyond jurisdiction and complaint proceedings are liable to be set aside at this stage itself.

5. Shri H.K. Shukla, learned counsel appearing for the complainant supported the order of the trial court and the revisional court dated 7.8.2009. Shri Shukla submits that the allegations mentioned in the complaint are sufficient to take cognizance. He relied on the order dated 1.7.2008 passed by the trial court. The said order shows that the complainant preferred application for summoning the relevant record from the office of Chief Medical and Health Officer, Bhind. Said application of the complainant was accepted by the court below and relevant record was summoned. Shri Shukla submits that court below examined the averments of the complaint and the material available before it and then only has taken cognizance. Learned counsel for the complainant submits that the sex ratio at Bhind is alarmingly low. This situation has arisen because of inaction of the Government authorities. The clinics are in hands and gloves with the Government authorities. Shri Shukla submits that once the entire official record was summoned and produced before the trial court, it was open for the trial court to examine that material and take cognizance based on it. The court below has not committed any legal or jurisdictional error in considering the said material and taking cognizance. In support of his submissions, he relied on certain judgments of the Supreme Court. He submits that whether or not complaint has sufficient material/evidence, it cannot be the subject matter of adjudication/judicial review at this stage. It is for the trial court to proceed with the factual matrix of the matter and give a conclusion after appreciation of the evidence. At this stage, normally and ordinarily no interference should be made.

6. Shri A.S. Rathore, learned Panel Lawyer borrowed the arguments advanced by Shri H.K. Shukla, learned counsel for the complainant.

7. No other point is raised by learned counsel for the parties.

8. I have heard the learned counsel for the parties and perused the record.

9. The Act of 1994 is an outcome of concern shown by both the Houses of Parliament. A Joint Committee of both the Houses prepared and presented a report in December, 1992. On the basis of report/recommendations aforesaid, a Bill was introduced in the Parliament. The basic reason of the worry/concern was that in the recent past Pre-natal Diagnostic Centers sprang up in the urban areas of the country using prenatal diagnostic techniques for determination of sex of the foetus. Such centres became very popular and their growth was tremendous as the female child is not welcomed with open arms in most of the Indian families. The result was that such centres became centres of female foeticide. Such abuse of the technique is against the female sex and affects the dignity and status of women. Various Organisations working for the welfare and uplift of the women raised their heads against such an abuse. Justice Leila Seth in her book "Talking of Justice" has quoted Rabindranath Tagore. Tagore said "every time a child is born, it brings with it the hope that God is not yet disappointed with man." After quoting Tagore, learned author expressed her pain by saying that "it appears to me that when a girl child is born in India, more often than not, man is disappointed with God. The birth of first daughter is often considered bad luck, the second a disaster and third a catastrophe". Rabindra Nath Tagore long back said:--

"O" Lord, why you have not given woman the right to conquer her destiny? Why does she have to wait head bowed by the road side Waiting with tired patience hoping for a miracle on the morrow"

Needless to mention that said morrow has not yet come. Unless the society is enlightened and law is enforced strictly, such goal cannot be achieved.

Despite showing concern and formulation of law on the subject, it is a matter of common knowledge that such incidents of female foeticide are going on and that is the reason sex ratio is falling down in various cities. This is happening mainly in Northern part of India. The Act of 1994 and Rules made there under needs to be strictly implemented.

As per 2011 Census, the sex ratio at Bhind District is as under:--

10. The Supreme Court also expressed its concern over the incidents of female foeticide in Voluntary Health Association of Punjab Vs. Union of India (UOI) and Others, AIR 2013 SC 1571 : (2013) 3 JT 614 : (2013) 2 RCR(Civil) 287 : (2013) 3 SCALE 195 : (2013) 4 SCC 1 : (2013) AIRSCW 1460 . The Apex Court opined that Indian society's discrimination towards the female child still exists due to various reasons which has its roots in the social behavior and prejudices against the female child and due to the evils of dowry system still prevailing in the

society in spite of its prohibition under the Dowry Prohibition Act. The decline in the female child ratio all over the country leads to an irresistible conclusion that the practice of eliminating female foetus by the use of pre-natal diagnostic techniques is widely prevalent in the country. Parliament wanted to prevent the same and enacted the Act of 1994. But the provisions of the Act of 1994 are not properly and effectively being implemented. Mushrooming of various pre-natal diagnostic centres in almost all parts of the country calls for more vigilance and attention by the authorities under the Act of 1994. But unfortunately their functioning is not being properly monitored or supervised by the authorities under the 1994 Act to find out whether they are misusing the said techniques. Seldom the machines used in said illegal purpose are seized and even if seized, they are released to the violators of the law only to repeat the crime. Hardly any cases under the 1994 Act end in conviction and such cases are pending disposal for several years. Many of the ultrasonography clinics seldom maintain any record as per the rules. Many of the clinics are totally unaware of the Government notifications and amendment of the rules concerned.

It is further held that the object of the 1994 Act was to provide for prohibition of sex selection before or after conception and for regulation of pre-natal diagnostic techniques for the purposes 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. The purpose of the enactment can only be actualized and its object fruitfully realized when the authorities under the 1994 Act carry out their functions with devotion, dedication and commitment and further there is awakened awareness with regard to the role of women in a society. It would not be an exaggeration to say that a society that does not respect its women cannot be treated to be civilized. When a female foeticide takes place, every woman who mothers the child must remember that she is killing her own child despite being a mother. That is what abortion would mean in social terms. Abortion of a female child in its conceptual eventuality leading to killing of a woman. Law prohibits it; scriptures forbid it; philosophy condemns it, ethics deprecate it, morality decries it and social science abhors it. The innocence of a child and the creative intelligence of a woman can never ever be brushed aside or marginalized. Civilization of a country is known by how it respects its women. It is the requisite of the present day that people are made aware that it is obligatory to treat the woman with respect and dignity so that humanism in its conceptual essentiality remains alive. Each member of the society is required to develop a scientific temper in the modern context because that is the social need of the present.

In para 9 of the aforesaid judgment certain directions were given to the Supervisory Board, Advisory Committee and authorities. These directions are required to be implemented strictly. The female foeticide has become a concern for the nation.

11. It is profitable to refer to certain provisions of the Act of 1994 and Rules made thereunder. Section 4 of the Act of 1994 deals with regulation of pre-natal diagnostic techniques. This provides that on and from the commencement of this Act,... (3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:--

- "(i) age of the pregnant woman is above thirty-five years;
- (ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
- (v) any other condition as may be specified by the Board."

Section 5 is couched in a mandatory language. It prescribes that no pre-natal diagnostic procedure can be applied unless the procedure prescribed in this section is fulfilled. The same reads as under:--

- "(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;
- (b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and
- (c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

(2) No person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives the sex of the fetus by words, signs or in any other manner."

Section 23 deals with "offences and penalties", which reads as under:--

"23. Offences and penalties.--(1) Any medical geneticist, gynecologist, registered medical practitioner or any person who owns a Genetic Counseling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

(2) The name of the registered medical practitioner who has been convicted by

the court under sub-section (1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register or the Council for a period of two years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of a Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic or of a medical geneticist, gynecologist or registered medical practitioner for conducting pre-natal diagnostic techniques on any pregnant woman (including such woman unless she was compelled to undergo such diagnostic techniques) for purposes other than those specified in clause (2) of section 4, shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees."

Section 25 makes it clear that whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in the Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both. However, in case of continuing contravention, an additional fine may be imposed.

Section 28 makes it clear that no court shall take cognizance of an offence under the Act of 1994 except on a complaint made by (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or (b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

12. It is seen that under Section 32 of the Act of 1994, the rules are made, which are known as "The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for brevity, the "Rules of 1996"). Rule 9 prescribes the procedure of maintenance and preservation of records. Relevant sub-rules of Rule 9 reads as under:--

"(4) The record to be maintained by every Genetic Clinic including a mobile Genetic Clinic, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.

(8) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall send a complete report in respect of all pre-conception or pregnancy related procedure/techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority."

Rule 10 (1A) reads as under:--

1A. Any person conducting ultrasonography/image scanning on a pregnant

woman shall give a declaration on each report on ultrasonography/image scanning that he/she has neither detected nor disclosed the sex of foetus of the pregnant woman to any body. The pregnant woman shall before undergoing ultrasonography/image scanning declare that she does not want to know the sex of her foetus.

(Emphasis Supplied)

13. Under the Rules of 1996, certain statutory Forms are prescribed in order to give effect to the provisions of the Act and Rules. Statutory Form "F" is prescribed for maintenance of record in respect of pregnant woman by Genetic Clinic/Ultrasound Clinic/Imaging Centre. A plain reading of this Form makes it clear that various entries are required to be made in this Form. It is followed by a declaration of pregnant woman and declaration of doctor/person conducting the tests. Form "G" relates to consent for invasive techniques. Form "H" deals with maintenance of permanent record of applications for grant/rejection of registration under the Act of 1994.

14. If the scheme of the Act is examined, it will be clear that the Act is introduced with a view to check the misuse of scientific techniques for the purpose of sex determination which leads to female feticide. In order to stop the abuse of techniques against female sex and with a view to uplift the dignity and status of woman, the Act is introduced. Various Sections are included in the Act so that the accountability of Centers can be fixed and prenatal diagnostic techniques can be regulated as per the Act of 1994.

15. Shri Raju Sharma, learned counsel for the petitioner, contended that the Court below has committed an error in taking cognizance of the offence because the notice given by the complainant was not in accordance with the requirement of Section 28(b) of the Act of 1994. The notice dated 28.3.2008 shows that the complainant has sent legal notice before the "Appropriate Authority" mentioning that there is flagrant violation of the Act of 1994 and Rules of 1996 in district Bhind. It is true that the said notice does not specify that it is filed only against the petitioner. In other words, it is a general notice sent by the complainant, complaining about violation of Act and Rules and misuse of Ultrasonography machines etc.

16. In my view, the purpose of insertion of Section 28(1)(b) is to give a chance to the Appropriate Authority to examine and take action against alleged violation. The notice appears is given to enable the Appropriate Authority to take action against the erring clinics/centres. The person sending notice needs to wait for 15 days so that during this time. appropriate action may be taken by authorities. This time limit is prescribed so that if grievance of complainant is redressed at the level of Appropriate Authority, the Courts will not be burdened to take cognizance of an offence and it can be taken care of at the level of "Appropriate Authority". The notice in the present case dated 28.3.2008 makes it clear that violation of provisions of the Act and Rules was specifically pleaded in the notice.

Thus, it cannot be said that the notice does not fulfill the requirement of the Act and Rules. Apart from this, the explanation of section 28 makes it clear that the word "person" includes a social organisation. The complainant is a social organisation and, therefore, falls within the ambit of "person".

17. In the complaint, the complainant has alleged that the petitioner has filled up Form "F" and deposited the same. These documents are fabricated documents. This Form "F" deposited by the petitioner does not tally with prescribed statutory Form "F". The preparation of fabricated documents and depositing them in the Office of Prescribed Authority is violation of Act and is an offence under Indian Penal Code. It is also alleged in the complaint that the pregnant women, who were subjected to ultrasound test were not required to give their consent in statutory Form "G". This is an offence under Section 23(1) of the Act of 1994. It is further alleged in the complaint that the present petitioner has submitted an application in the office of CMHO, Bhind informing that he has installed an additional ultrasound machine at his clinic. This intimation is given on 22.5.2009. The said machine is not registered under the provisions of the Act. The petitioner is continuously using the said machine without there being any registration and, therefore, it is an offence under Section 23(1) of the Act of 1994. The complainant alleged that in the meeting of the department, it was decided to seize the said ultrasound machine on 4.5.2012 but the said machine was not seized which shows that it is violation of the decision taken on 4.5.2012. It is also an offence under Section 188 of IPC. In addition, it is alleged in the complaint that Form "F", which was produced by the petitioner, is not in consonance with Section 4(3) of the Act. The petitioner has not filed the affidavit in consonance with Rule 4(1) of the Rules of 1996.

18. Shri Raju Sharma on more than one occasion drew attention of this Court on the complaint (page 68 of the compilation) and urged that the allegations of complaint do not constitute offence. On the basis of said allegations, no case is made out for taking cognizance.

19. In the considered opinion of this Court, the act of sex determination or test takes place inside the clinic/diagnostic centre. Nobody except the person, who is being tested, and the person who conducts the test, know about the details of such tests. In order to ensure transparency and accountability, various Forms are prescribed so that the technique is not misused. During the course of argument, Shri Raju Sharma emphasized that the allegations mentioned in the complaint are vague. No details are mentioned about conducting of test of sex determination etc. on any person. It is important to note that the law-makers were conscious of this fact that it is difficult to get clear evidence of act of sex determination by the centres. Thus, in various provisions of the Act and Rules, it was made obligatory for the centres to fill up the forms, file declaration, obtain affidavit/consent etc. These informations were required to be given in prescribed forms. The same were required to be preserved for stipulated period. In addition, same were required to be filed before the Prescribed Authority. The purpose was

to ensure transparency and eradicate the possibility of sex determination and female foeticide. As per Section 23 of the Act of 1994, any contravention of provisions of Act or Rules is an offence and is punishable. Thus, if forms are tempered/fabricated, consent is not obtained, statutory informations are not given in prescribed forms, it amounts to contravention of provisions of the Act and Rules. Thus, Section 23 is wide enough to cover any violation of Act or Rules and bring it within the purview of "offence". In the present case, the complainant, in no uncertain terms, alleged that the prescribed Forms are either fabricated or do not tally with the requirement of statutory Forms. Other allegations of complaint are also related to violation of Act/Rules.

20. In the further opinion of this Court, if the allegations mentioned in the complaint are accepted on their face value, definitely Sections 23 and 25 of the Act of 1994 are attracted. Putting it differently, if the allegations mentioned in the complaint are treated to be correct, offence under the Act of 1994 are made out. Thus, as per the test laid down in Bhajanlal (supra), no interference can be made on this ground.

21. Shri Raju Sharma further contended that the trial court has mechanically taken cognizance on the basis of fake complaint and statements of two witnesses. However, a minute scrutiny of record shows that the said contention is contrary to record. It is seen that the complaint was preferred on 5.5.2008. Thereafter, on 1.7.2008, an application was filed to summon the record from the Office of Prescribed Authority. The trial Court by order dated 1.7.2008 summoned the said record. The record was ultimately produced before the court below. The statements of complainant's witnesses were recorded under Section 200 of the Code of Criminal Procedure. Thereafter on 2.3.2009, the Court below opined that after considering the averments of complainant, statements of witnesses and documents produced in the case, it prima facie appears that petitioner has committed an offence. The Court below opined that sufficient material is available to take cognizance under Sections 23 and 25 of the Act of 1994. Hence, cognizance was taken and complaint was registered.

22. Section 29 of the Act makes it clear that relevant record, forms, charts, reports are required to be preserved for a period of two years. However, if any criminal proceedings are instituted, it needs to be preserved till the final disposal of the proceedings. Rule 9(8) of the Rules of 1996, quoted above, also makes it clear that the clinic/centre is required to send a complete report in respect of all pre-conception or pregnancy related procedures/techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority.

23. Thus, it is seen that the trial Court has not mechanically taken cognizance of the matter. The original record was summoned and on perusal of the same, the court below prima facie found that there are sufficient reasons to proceed against the petitioner. I am unable to hold that the order dated 2.3.2009 is passed without proper application of mind. The Revisional Court has also taken the same

view and I do not find any legal infirmity in the same.

24. Shri Raju Sharma, learned counsel for the petitioner, relied on various judgments of Supreme Court. As discussed, the judgment of Bhajanlal (*supra*) does not help the petitioner in any manner. At the cost of repetition, it is noted that if the allegations in the complaint are accepted on their face value, certainly the offences under sections 23/25 of the Act of 1994 are made out.

25. As analyzed, the trial Court has not taken cognizance on mere perusal of complaint and statements of two witnesses. It has applied mind on relevant record also. Hence, the judgment of Pepso Foods Ltd. (*supra*) is of no assistance to the petitioner in the present case.

26. In Sharad Kumar Sanghi (*supra*), the Apex Court considered the words "sufficient ground for proceeding". It means that grounds should be made out in the complaint for proceeding against the respondent. In my view, neither the allegations in the complaint are vague nor it can be said that it does not constitute an offence under the Act. There were sufficient grounds for proceeding against the petitioner and, therefore, this judgment has no application. Same is the view about the judgment of Monju Roy (*supra*). The said matter also deals with omnibus statement. In the present case, there are specific allegations against the petitioner in the complaint. Hence, this judgment is of no help to the petitioner. In D.P. Gulati (*supra*), the Apex Court was dealing with vexatious complaint. At this stage, it cannot be said that the complaint is vexatious. In Rishipal Singh (*supra*), the Supreme Court dealt with the scope of Section 482 CrPC. No doubt, powers under Section 482 CrPC are wide and proceedings can be quashed if certain parameters are satisfied. However, it is noteworthy that the Apex Court in Amit Kapoor Vs. Ramesh Chander and Another, (2012) 4 JCC 2885 : (2012) 9 JT 329 : (2012) 9 JT 312 : (2012) 9 SCALE 58 : (2012) 9 SCC 460 , laid down broad principles for exercise the jurisdiction under Section 397/482 CrPC. It is held that the principles to be considered for proper exercise of jurisdiction, particularly with regard to quashing of a charge either in exercise of jurisdiction under Section 397 or Section 482 CrPC or together, as the case may be, can be summarised. Though there are no limits of the powers of the Court under Section 482 CrPC but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 CrPC should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, as it an abuse of the process of court leading to injustice. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal

or conviction. In exercise of its jurisdiction under Section 228 and/or under Section 482, the court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The court has to consider the record and documents annexed with by the prosecution. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27. If the litmus test of the judgment in Amit Kapoor (supra) is applied in the factual matrix of the present matter, it cannot be said that the court below has committed any legal error in taking cognizance of the matter. Thus, no interference is required by this Court at this stage.

28. In view of foregoing analysis, I find no reason to interfere in this petition. Petition fails and is hereby dismissed. Registry is directed to carefully keep the compilation dated 28.9.2015 on record.