

(2014) 02 BOM CK 0308

In the Bombay High Court

Case No : Criminal Writ Petition No. 158 of 2013

Rajesh Ratnakar Ranade

APPELLANT

Vs

Member of Appropriate Authority and Others

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : (2015) 1 BomCR(Cri) 470

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : P.M. Shah, Sr. Advocate instructed by Kulkarni Mukul S, Advocates for the Appellant; S.B. Pulkundwar, A.P.P, Advocates for the Respondent

Judgement

A.M. Thipsay, J.—Rule. By consent, Rule made returnable forthwith. The respondents waive service. By consent, heard finally. The petitioner is being prosecuted vide R.C.C. No. 495 of 2011 pending before the Judicial Magistrate, First Class, Dhule on the allegation that he has committed offences punishable under the Preconception and Pre-natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 2003 (hereinafter referred to as "the PCPNDT Act") and Rules framed thereunder. According to the petitioner, no case for proceeding against him was made out from the complaint. The petitioner, therefore, made an application for discharge, which was rejected by the learned Judicial Magistrate, First Class by an order dated 8.1.2013.

Being aggrieved thereby, the petitioner has approached this Court invoking its constitutional jurisdiction.

2. I have heard Mr. P.M. Shah, the learned Senior Advocate for the petitioner. I have heard Mr. S.B. Pulkundwar, the learned Additional Public Prosecutor for the respondent Nos. 1 and 2.

3. With the assistance of the learned Counsel, I have gone through the petition and the annexures thereto, including the copy of the complaint and the impugned order.

4. The case against the petitioner is that he runs a Sonography Center, which was inspected, without notice, by the complainant i.e. the Appropriate Authority, on 18.6.2011, when certain deficiencies and contraventions of the provisions of the PCPNDT Act and the Rules framed thereunder, were noticed. The petitioner was called upon to offer his explanation with respect to the contraventions allegedly noticed by the appropriate authority during the inspection on 18.6.2011. The petitioner replied stating that there had been no contraventions. The appropriate authority, however, was not satisfied with the explanation and as such, a complaint came to be filed.

5. As per the complaint, the contraventions/violations of the provisions of the PCPNDT Act and the rules that were noticed by the appropriate authority are as follows :

"(a) That, at the time of inspection, the experience or eligibility certificate was not displayed at the Sonography Center.

(b) That, at the time of inspection, the record in respect of sonography center was not maintained and such record was not produced at the time of inspection.

(c) No trained person or qualified person was present at the sonography center.

(d) The sonography center/sonography machine was not registered under the provisions of the PCPNDT Act and the sonography machine had also not been registered."

6. As regards the alleged contravention at (a) above, the learned Additional Public Prosecutor could not point out any Rule or Regulation requiring such certificate to be displayed at a sonography center. Infact, that there is no such rule, was conceded in the course of hearing.

7. As regards the contravention mentioned at (c) above, it is not disputed that the petitioner himself is duly qualified and authorized to run sonography center and possesses the requisite qualification. Thus, that this allegation is not proper or correct, is conceded.

8. As regards violation at (d) above, the same seems to be without any basis and factually incorrect. It is attempted to be supported by the learned Additional Public Prosecutor, by claiming that in the certificate of registration issued after renewal of the original registration certificate, the "make" of the sonography machine, as per column No. 3 of the printed prescribed proforma of the original certificate, has not been mentioned. Interestingly, this certificate has been issued by the Competent Authority i.e. by appropriate authority itself; and how the petitioner could be held responsible for not completely filling in the said certificate is difficult to comprehend. The original certificate of the registration mentions the number of the sonography machine and the same number has been mentioned in the certificate issued after renewal. Infact, while replying to the show-cause notice, the petitioner had replied as to how for any omissions in the certificate of registration, he could be held responsible, but this aspect has

not been touched in the complaint and the same allegation had again been repeated.

9. In the course of hearing, the learned Additional Public Prosecutor emphasized only on the contravention/violation mentioned at (b) above. It is submitted that when the surprise inspection took place, the record in respect of the sonography center was not maintained and it was not made available to the inspection party.

10. It is apparent that out of the four alleged violations/contraventions of the provisions of the PCPNDT Act/Rule, three are found to be factually incorrect. With respect to this allegation:-- viz :of non-production of the record before the inspection party, the petitioner in reply to the show cause notice had submitted that what were the deficiencies noticed by the Inspection party was not clear, and that, the "F" Forms, consent forms/declaration of each pregnant women had been maintained at the sonography center; and that, the appropriate authority had signed the same in the token of having seen the same. In spite of this, the complaint again reproduces the same vague allegations without stating as to what was the record, which was not properly maintained.

11. It appears that the appropriate authority uses a prescribed proforma in respect of the show cause notices, as would be issued to the sonography centers, Genetic Counseling Centers, Genetic Laboratories and Genetic Clinics, etc. In this proforma, 16 violations are printed serially. It appears to be the practice of the appropriate authority to put a tick mark against a particular serial number in the printed proforma, if the violation mentioned therein is noticed during inspection. With respect to the allegation (b) above - which relates to not maintaining of the record - a tick mark has been put against the matter at Sr. No. 6 of the proforma of the show cause notice, which reads as under :

"6. Record not maintained & or not produced at the time inspection as per the provisions of law Consent form, Declaration of the Doctor & Mother, information of each pregnant mother in "D", "E" or "F" form as the case may be (or 18 point register) Rule 10(1), 10-A, 9(1) section 29(1)(2)."

It is seen that its a composite remark and the appropriate authority has not cared to remove what was not applicable in the instant case.

12. Thus, three of the allegations in respect of contraventions/violations, which were capable of verification are found to be wrong. The forth one :viz :of not making the record available to the inspection party is too vague and unsubstantiated. The complaint appears to be vague with respect to the allegations of non-maintenance of the record by the petitioner and alleged non-production thereof before the inspection party. The categorical stand taken by the petitioner in his reply to the show-cause notice has not been dealt with.

13. In my opinion, there are not sufficient grounds for proceeding against the petitioner. Under the circumstances, continuation of the proceedings against the petitioner would amount to abuse of the process of the Court.

14. The petition is allowed in terms of prayer Clause "A". Rule is made absolute accordingly.