

(2014) 05 BOM CK 0024

In the Bombay High Court

Case No : Criminal Writ Petition No. 985 of 2013

Ravindra

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 23, 25, 4(3), 6

Citation : (2014) ALLMR(Cri) 3466 : (2014) 3 BomCR(Cri) 728

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : K.C. Sant, Advocate for the Appellant; S.V. Kurundkar, Public Prosecutor, V.D. Godbharle and S.G. Chincholkar, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—The present Petition has been filed to quash complaint filed by Appropriate Authority (hereafter referred as "complainant") under the provisions of Pre conception and Pre natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereafter referred as "Act") and the Pre conception and Pre natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereafter referred as "Rules").

2. The Petition is Admitted and has been heard finally. Learned counsel for the Petitioner as well as learned Public Prosecutor for the Respondents submitted elaborate arguments. With this matter some other similar matters were also argued and Counsel for Petitioners adopted arguments of each other on law points to request for quashment of Criminal Trials against accused.

3. Case of the Petitioner is that he is running Durga Hospital in Amalner and has purchased sonography machine. According to him, he never conducted any sex determination tests and he maintains regular records. He was granted registration prior to 1999. He maintains records and submits Form F filling all the

required information. On 6th June, 2012 Respondent No. 2 with other officials, visited the hospital. Panchnama was drawn. It was claimed that the Petitioner has not maintained information in Form F and in column Nos. 12 to 15, he had written "Nil" which is typed on Form itself. It was alleged that details of full address of the patients, date of last menstrual period, number of weeks of pregnancy, details of earlier children of patient, were not mentioned. It was alleged that only names of 4 patients were given. With such and other allegations, complaint was lodged by Appropriate Authority in the Court of Judicial Magistrate, First Class, Amalner on 9th July, 2012. The J.M.F.C. issued process and the Petitioner filed Criminal Revision challenging the order, however the same was rejected by the Additional Sessions Judge, Amalner. The Petitioner has enclosed copy of evidence before charge, recorded in the matter. Referring to the evidence before charge, the Petitioner claims that it is not the complaint that any material is suppressed or deliberately not filled in by the Petitioner. According to the Petitioner, there was no material to frame charge against the Petitioner but on 19th September, 2013 the trial Court framed charge for contravention of Section 4(3) and 6 of the Act and Rule 9(4) punishable u/s 23 and 25 of the Act. Thus, the present Petition to quash the charge and the proceedings against the Petitioner.

4. On behalf of the Respondents, affidavit in reply has been filed by the Appropriate Authority. According to the Appropriate Authority, the Petitioner did not maintain F Forms properly but separate loose sheets of F Forms were found and they were also incomplete. As per the Act, sonologist has to maintain register of F Forms and information in F Forms should be filled in serial order as per sub rule (1) of Rule 9. Various discrepancies in maintaining of record were found. On 6th June, 2012 one Sonabai Koli was examined but her F Form was found to be incomplete. In Column Nos. 12 to 14 information was typed as "Nil", which is suspicious. In column No. 4, number of children and age, and in column No. 8 when was the Last Menstrual Period (L.M.P.) and weeks of pregnancy, was not filled in. It was noticed that one Rekha Borse was examined under sonography machine but in her Form F, column Nos. 12 to 14 were shown as "Nil", which was typed. Her full address was also not mentioned, and information regarding L.M.P. was not filled in. The affidavit in reply has annexed copies of concerned documents. Reference is made to the F Form of one Anita Ravindra Patil, where column regarding number of children in F Form was not filled in; L.M.P. and weeks of pregnancy columns were not maintained; column Nos. 12 to 14 were typed as "Nil". Similarly, there is reference to form of one Rukaiyabeen Shaikh. The affidavit refers to such non compliances and claims that there is no substance in the present Petition.

5. The learned counsel for Petitioner referred to the copy of the complaint filed at Exhibit B and deficiencies pointed out in para 4. Counsel referred to the copies of Form F to explain that "Nil" was typed in the Forms as the same was not applicable. According to the counsel, it cannot be stated from the record that the Petitioner had any intention to do sex determination. It is argued that from the

Forms it cannot be said that they were inaccurate. Referring to the evidence which has already been recorded, the learned counsel argued that the Petition needs to be allowed and the charge framed needs to be quashed.

6. After referring to the various provisions of the Act, reference was made to the case of Dr. Pratidnya Jayesh Shinde and Dr. Rahul Sudhirchandra Shinde Vs. Appropriate Authority, Dr. Rameshchandra Kisan Savkare and The State of Maharashtra, . In that matter, proceeding was quashed as the complaint was silent as to how responsibility of maintaining records was cast upon the concerned Applicants as were before the Court. Reliance is also placed on the Judgment in the case of Dr. Alka w/o Anant Gite and another vs. The State of Maharashtra in Criminal Application No. 3500 of 2011 decided on 11th May, 2012. Referring to that Judgment, submission is that inadvertently if a column is blank, it cannot attract offence. Relying on the case of "Dr. Mrs. Uma Shankar Rachewad vs. Appropriate Authority" Criminal Writ Petition No. 407 of 2011, decided on 19th April, 2012, it is submitted that writing of "N.A." i.e. Non Applicable does not amount to incomplete filling of Form. Judgment in the case of Dr. Ravindra s/o Shivappa Karmudi vs. The State of Maharashtra in Criminal Application No. 757 of 2012 decided on 3rd May, 2012, was referred to submit that F Form was incomplete does not mean criminal offence is there. Reliance was also placed on the Judgment in the matter of Dr. Tushar Rangrao Patil vs. Appropriate Authority in Criminal Writ Petition No. 406 of 2011 decided on 2nd May, 2012. These are matters decided by learned Single Judge of this Court. The submission is that in those matters also although there were defects in maintaining of Form F, the Petitioners therein were given benefit and the concerned cases against those Petitioners were quashed. Thus it is argued that the Petition needs to be allowed.

7. The learned Public Prosecutor referred to the copy of the complaint, Para 4, to submit that the F Forms which were maintained by the Petitioner were found to be incomplete and in column Nos. 12 to 15 in advance "Nil" was typed, which creates suspicion. Reference was made to the copies of F Forms which are available in the Petition and which when read with copy of the complaint, clearly show that material information regarding number of children, age, last menstrual period, had not been filled. As per the complaint, one Rekha Pramod Borse was examined under sonography machine but in her F Form, column Nos. 12 to 15 were shown as "Nil". Full address of the patient was also not given. Referring to the complaint and copies of Forms available on record, Public Prosecutor submitted that there were incorrect filling up of the columns and the material information like number of children was left blank and clearly penal provisions of the Act are applicable.

8. In the present matter, the record shows that the evidence before the charge was recorded by the J.M.F.C. who then passed orders on 19th September, 2013 directing framing of charge and on same day the charge was framed. Record also shows that after framing of charge, further evidence has also been recorded. The

learned Public Prosecutor referred to the case of Dr. Sujit Govind Dange Vs. State of Maharashtra and Others, , to submit that Act and Rules require maintaining of complete records and it is irrelevant whether the deficiencies are minor or major and if deficiencies are there, penal provisions are attracted.

9. Considering the rival submissions and the Aims and Objects of the Act and the scheme, as is evident from the Act and Rules, and the Judgment of the Division Bench referred by the Public Prosecutor, I find no substance in the arguments for Petitioner. I find that when in this matter evidence after charge has already been recorded, it would not be appropriate for this Court to interfere and quash the proceedings. Considering the Complaint and documents in support of the Complaint, Proviso of Section 4(3) and other provisions of the Act are clearly attracted. When evidence after charge has also been recorded, no question of discharge as claimed arises.

10. No case is made out to quash the charge which has been framed and no case is made out to quash the proceedings.

The Petition stands rejected.