

(2012) 02 MAD CK 0280
In the Madras High Court
Case No : Criminal Appeal No. 760 of 2005

State	Vs	APPELLANT
S. Suvitha Saravanan		RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Citation : (2012) CriLJ 3762

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : C. Balasubramanian, app, for the Appellant; D. Baskaran, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The appellant has come forward with this criminal appeal challenging the acquittal of the accused in C.C. No. 353/2002, dated 18-11-2003, on the file of the Judicial Magistrate No. 2, Cuddalore. The Act known as Pre-conception on Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "Act") is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. Since a legislation was required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act, the Act was passed. After passing of the Act, during the subsequent years certain inadequacies and practical difficulties have come to the notice of the Government and hence the amendments were introduced.

2. The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before conception. These

practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.

3. The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to enact and implement in letter and spirit a legislation to ban the pre-conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex-selective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the society.

4. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was enacted to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting generic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide and for matters connected therewith or incidental thereto. Since few years back pre-natal diagnostic centers grew up in all most all urban areas of the country who are using pre-natal diagnostic techniques for determination of sex of the foetus. In most of Indian families, the female child is not welcomed resulting in tremendous growth and popularity of these centers for female foeticide. Such abuse of techniques is crime against female sex diminishing the dignity and honour of women. Many female organisations working for the uplift and welfare of the women are raising their lead in protest of such an abuse. It was thought appropriate to come out with a legislation which can regulate the use of, and to provide deterrent punishment for the violation of the provisions of the legislation. This Act was assented by the President on 20th September, 1994 and has been enforced with effect from 1st January, 1996. vide G.S.R. 706, 20th December, 1995.

Factual summary of the case:

5. Adverting to the facts of the present case, the respondents are running a hospital under the name and style of Sri Kannan Hospital Pvt. Ltd. at Cuddalore. On receipt of information P.W. 1, Residential Medical Officer, working in Cuddalore Government Hospital, proceeded to the hospital run by the respondents and found a portable Scan Machine. They were in admission that the scan machine was utilised for determining the sex of a child in the womb. The team consisting of Joint Director, Health Services, Cuddalore District, the Superintendent of Government Hospital, Cuddalore, the Resident Medical Officer, Cuddalore and Executive Officer, Cuddalore, visited the respondents hospital under the direction of Director of Medical Services. On 14-3-2002 after visiting the hospital they seized the scan machine under the cover of Mahazar Ex. P.1, which was kept in the operation theatre in the hospital. Ex. P.2 is the letter given by the respondent

stating that the scan was used as ultrasonic scanner, being used in the operation theatre and that they will make necessary arrangements to register the same to register soon. Admittedly, the scan was not registered at that time.

6. As per the direction of Director of Medical Services, on 12-4-2002 a form was given to the 2nd respondent to register the scan. In the meanwhile, as per direction of the Director of Medical Services, on 19-3-2002, the scan machine was returned to the second respondent by means of Ex. P.3 proceedings, in which it is also stated that the second respondent has applied for the registration of the scanner under the Act. P.W. 1 says that on 14-5-2002, the registration was also made. The possession of scanner without registration is punishable u/s 3(1) and 3(3) of the Act.

7. The learned Judicial Magistrate No. II, Cuddalore, after analysing the materials available on record acquitted the respondents by observing that it is not shown by the complainant that the respondents were running Genetic Laboratory or Genetic Clinic or Genetic Counseling Centre and that the doctors working in the hospital had performed prenatal diagnostic techniques. Aggrieved against the order of acquittal the State preferred the present appeal.

8. Point for consideration:

Whether the complainant has shown that the respondents are punishable under Sections 3(1) and 3(3) of the Act?

Point:

9. The learned Additional Public Prosecutor would submit that since necessary registration was not done for the scanner, which was admittedly kept in the hospital running by the respondents, they are punishable under the penal provisions and that subsequent registration will not cure the defect.

10. Per contra, the Learned Counsel for the respondents would submit that on the date of seizure of the scanner, there was no laboratory functioning as Genetic Laboratory in the hospital, nor Genetic Counseling Centre, nor Genetic Clinic was conducted in the hospital of the respondents as evident from evidence of P.W. 1, that the Honourable Supreme Court has seized of the matter and an interim order was passed directing the State Government to give appropriate form for getting registration for scanners under this Act and during the relevant period no such form was not supplied to the respondents for registration, that the scanner was kept in the operation theatre for the purpose of conducting surgeries and hence the respondents cannot be compelled to face the penal consequences.

11. It is profitable to furnish the relevant provisions which are as follows:

3. Regulation of Genetic Counselling Centers, Genetic Laboratories and Genetic Clinics:-- On and from the commencement of this Act:-

1. No Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with or help in conducting

activities relating to pre-natal diagnostic techniques.

2. No Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess the qualifications as may be prescribed.

3. No medical geneticist, gynaecologist, paediatrician registered medical practitioner or any other persons shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any prenatal diagnostic techniques at a place other than a place registered under this Act.

12. As far as Section 3(1) of the Act is concerned, the pre-natal diagnostic techniques can be conducted in the registered clinic etc. and Section 3(3) contemplates prenatal diagnostics techniques could not be undertaken in a place Other than a place registered under the Act.

13. The oral evidence of P.W. 1 is categorically with respect to the registration of the scanner. After it was seized, Form was supplied. He says that as per the direction of Director of Medical Services, a Form of Registration was given to 2nd accused and the same was submitted to the director of Medical Services and on 14-5-2002 the registration was effected and she was permitted to utilise the scanner till 14-5-2007.

14. The Honourable Supreme Court in W.P. (Civil) No. 301 of 2000 (center for Enquiry into Health and Allied Themes (CEHAT) and Others Vs. Union of India and Others, on 9-2-2001 passed an interim order directing the concerned authority in the State of Tamil Nadu to give appropriate Form for getting registration of the clinics having ultrasound machines and if they are complying with the necessary rules and regulations, the authority shall grant registration immediately.

15. Afterwards the Apex Court in the same proceedings passed final order on 19-9-2003 which is reported in center for Enquiry Into Health and Allied Themes (CEHAT) and Others Vs. Union of India (UOI) and Others, wherein inter alia, it is directed that the Central Supervisory Board would ensure that the State of Tamil Nadu and 4 other States appoint the State Supervisory Board as per the requirements of Sec. 16(A) of the Act. Section 16(A) provides the procedures to be observed for the constitution of State Advisory Board and the specified authorities are to be the members of the Board.

16. While the above-said circumstances are taken for consideration, it is seen that during the relevant date i.e. on 14-3-2002, the respondents were not supplied prescribed Form for registration of the scanner inspite of direction of Supreme Court, the authorities did not issue prescribed form for the registration of scanner. It is also in the cross-examination of P.W. 1 that the respondents are not running any genetic laboratory, genetic Counselling centre or genetic clinic. The team did not also find out any pre-natal diagnostics techniques from the

respondents hospital. In these circumstances, there is no ground to find the respondents guilty under the provisions of relevant Act and I do not find any valid ground to disturb the conclusion arrived at by the learned Judicial Magistrate No. 11, Cuddalore. The judgment of the trial Court deserves to be confirmed and it is accordingly confirmed. I answer this point as indicated above. In fine, the appeal is dismissed confirming the findings of the trial Court in CC. No. 353 of 2002 dated 18-11-2003.