

(2015) 08 RAJ CK 0077

In the Rajasthan High Court

Case No : Criminal Misc. Petition Nos. 1604/2012, 1507/2010, 1906/2011, CrI. Revision Petition No. 504/2012, Cr. Misc. Petition Nos. 1011/2012, 1318/2012, 1605/2012, 1606/2012, 1608/2012, 1668/2012, 1670/2012, 1676/2012, 1677/2012, 1733/2012, 1739/2012, 1

Tej Sharma and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Criminal Procedure Code, 1973 (CrPC) — Section 397(3), 468, 468(2)(b), 473, 482

Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 17, 23, 23(1), 25, 28

Citation : (2015) 08 RAJ CK 0077

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Mahesh Bora, Senior Advocate assisted by Nishant Bora, J.S. Choudhary, Senior Advocate assisted by Pradeep Choudhary, B.L. Maheshwari, Senior Advocate assisted by R.K. Rathi, Pankaj Sharma, S.D. Purohit, M.K. Garg, Pankaj Gupta, Sunil Joshi, Ravi Bhansali

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J—These criminal misc. petitions under section 482 CrPC, including S.B. Cr. Revision Petition No. 504/2012 have been filed by the petitioners being aggrieved with the proceedings pending against them under the provisions of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) PCPNDT Act (hereinafter referred to as "the PCPNDT Act"). In all the cases, complaints have been filed against the petitioners under section 28 of the PCPNDT Act with the allegations that the petitioners have contravened the provisions of the PCPNDT Act and the Rules made thereunder known as The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter after referred to as "the Rules of 1996"). In some of the cases, even charges have been framed by the courts below and the revision

petitions have also been dismissed by the revisional courts. In some of the cases, cognizance has been taken and the revision petitions have been dismissed by the revisional courts. In some of the cases, the petitioners have challenged the order of taking cognizance before this Court by way of these criminal misc. petitions, whereas in some of the cases, the petitioners have directly challenged the complaints. The criminal revision petition 504/2012 is filed against the order of framing charge against the petitioners for the offences under sections 3(1) and 23(1) of the PCPNDT Act.

2. Since common controversy is involved in all these cases, the same are tagged with each other by different orders passed by this Court and, therefore, they are being decided together by this common order.

3. Learned counsel for the petitioners have challenged the proceedings pending against them under the PCPNDT Act mainly on the following grounds;

?(i) That the allegations levelled against the petitioners in the complaints are mostly in respect of alleged irregularities committed by them in maintenance of records. The other allegations are also in respect of minor irregularities such as non-availability of copy of the PCPNDT Act at the time of inspection, non-display of notice in the premises declaring that disclosure of sex of foetus is prohibited under law and non-display of name and designation on the dress worn by the nurse, employees and other persons associated with the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre etc. It is contended that the said irregularities are minor in nature and cannot be equated with the major offences as prescribed in sections 5 and 6 of the Act. It is argued that such minor offences do not fall within the ambit of section 23 of the PCPNDT Act and only fall within the ambit of section 25 of the said Act.?

It is argued that the legislature in its wisdom enacted section 25 for the aforesaid category of offences and the proposition of law on this point is very clear that no provision can make the other provision redundant or otiose. Merely because of use of common expression in sections 23 and 25, the said authorities are not allowed to apply section 23 with virtually closed eye in all cases involving the cases of minor irregularities. The consequences of both these provisions are very different and as such, the consequences of section 23 are very harsh, whereas the consequences of section 25 are not that harsh and of course, section 468 of the CrPC providing bar to taking cognizance after lapse of the period of limitation also comes into play depending upon the provision, which is attracted. So far as section 25 of the PCPNDT Act is concerned, the period of limitation is one year because the offence is punishable with imprisonment not exceeding one year. But so far as section 23 is concerned, the period of limitation is three years as offence is punishable with an imprisonment exceeding one year. The authority in question in order to avoid the application of section 468(2)(b) of CrPC filed the complaint under section 23 of the PCPNDT Act on wholly wrong and misconceived basis.

?(ii) That the complaints against the petitioners alleging contravention of the provisions of the PCPNDT Act and Rules made thereunder filed by the persons, who are not authorized to file the complaint and, therefore, as per the provisions of section 28 of the PCPNDT Act, the courts below have erred in taking cognizance against the petitioners.

(iii) That non-reaching of Form-F on the fifth day of the month cannot be termed as a violation of sub-rule (8) of Rule 9 of the Rules of 1996 as the Rule speaks of only sending such Form and not that the said Form should be reached up to fifth day of the month.

(iv) That in some of the cases, the trial court without even condoning the delay in filing the complaints, took cognizance against the petitioners, though admittedly, those complaints were filed after three years from the date of inspection. It is contended that the trial court before entertaining the time barred complaints is required to hear the accused before condoning the delay. In support of the above contentions, learned counsels for the petitioners have placed reliance on decisions of this Court in Panney Singh and Others Vs. State of Rajasthan, (1980) CriLJ 339 as well as the decision of Allahabad High Court in Ravi Dutt Sharma Vs. State of U.P., (2001) CriLJ 4408 ?

4. Per contra, Mr. Rajesh Panwar -learned Additional Advocate General has argued that none of the provisions of the PCPNDT Act classifies the offences as major and minor. Section 23 of the PCPNDT Act deals with certain class of persons and it is provided that if either of the persons referred in that section, contravenes any provisions of the Act or Rules made thereunder, shall be punishable with imprisonment for a term which may extend to three years or with fine. Whereas section 25 is in relation to those persons, who contravene any of the provisions of this Act or any rule made thereunder, for which no penalty has been elsewhere provided in this Act.

5. It is further contended that the exigencies to be punishable under section 23 of the PCPNDT Act are clear, unambiguous and admits of no doubt. It is provided that 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 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 liable to be punished. Thus, the class of persons and nature of violation of provisions of the Act and Rules thereunder are well defined under section 23 of the PCPNDT Act.

6. So far as section 25 of the PCPNDT Act is concerned, it starts viz ?whoever contravenes any of the provisions of this Act or any rules made thereunder for which no penalty has been elsewhere provided in this Act. The section is clear in its language and object as it starts as penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided.

7. It is argued that class of defaulters have been defined in sections 23 and 25 of the PCPNDT Act separately and independently as sections 23 and 25 classify the offenders and not the offences and, therefore, the contention of the petitioners that section 25 deals with the minor offences such as maintenance of records etc. is not tenable.

8. Learned Additional Advocate General has further argued that all the complaints against the petitioners have been filed by competent persons i.e. either by the appropriate authority or the officer authorized by the appropriate authority and, therefore, it cannot be said that the trial courts have taken cognizance against the petitioners without their being any complaint by the authorized persons.

9. Learned Additional Advocate General has further argued that non-maintenance of the records cannot be termed as a procedural lapse and is always an independent offence for contravention of sections 5 or 6 of the PCPNDT Act.

10. Learned Additional Advocate General has further argued that in none of the cases, the concerned court has taken cognizance against any person on time barred complaints without condoning the delay. It is contended that as per section 473 CrPC, the trial court has every power to extend the period of limitation and can take the cognizance of offence after the expiry of limitation if it is satisfied on the facts and circumstances of the case, the delay has been properly explained or that it is necessary to do so in the interest of justice. It is also contended that there is no provision under the CrPC which requires that before extension of period of limitation, a Magistrate is required to give opportunity of hearing to the accused and therefore, the contention of the petitioners to the effect that before condoning the delay in filing the complaint, no opportunity was provided to them is devoid of force.

11. Learned Additional Advocate General has also argued that in most of the cases, the petitioners have challenged the order of taking cognizance or framing charges by way of revision petitions before the revisional court and those revision petitions have been dismissed and now they have filed these criminal misc. petitions under section 482 CrPC, which are in fact second revision petitions and those second revision petitions are not maintainable as per the provisions of section 397(3) CrPC and, therefore, they are liable to be quashed and set aside.

12. Learned Additional Advocate General has also argued that in some of the cases the petitioners have directly approached this Court under section 482 CrPC against the order of taking cognizance and those petitions are also not maintainable because the said orders are revisable and without availing the remedy of revision, these criminal misc. petitions are not maintainable. Learned Additional Advocate General has placed reliance on decision of Hon"ble Supreme Court in Mohit alias Sonu and Another Vs. State of U.P. and Another, (2013) 8 AD 631 : AIR 2013 SC 2248 : (2013) 3 JCC 2250 : (2013) 9 JT 205 : (2013) 3

RCR(Criminal) 673 : (2013) 7 SCALE 620 : (2013) 7 SCC 789 and of this Court in Ashish Singhal Vs. State of Rajasthan and Others, (2015) 1 RLW 495 .

13. Heard learned counsels for the rival parties and perused the material available on record.

14. For the purpose of dealing with the arguments of the learned counsels for the petitioners to the effect that the offences relating to non-maintenance of record etc. are minor offences. it is apposite to refer to the provisions of sections 23 and 25 of the PCPNDT Act, which are as follows:

23. Offences and penalties.--(1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling 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 shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of or on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticists, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for the purposes other than those specified in Sub-section (2) of section 4, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

(4) For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.

25. Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided.--Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this 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 and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.?

15. From bare reading of section 23 of the PCPNDT Act, it is clear that it refers to a class of persons, who may violate the provisions of the Act and Rules thereunder and penalty has been provided for such violations. However, section 25 of the PCPNDT Act is in reference to any person, who may contravene any of the provisions of the PCPNDT Act or the Rules made thereunder, but for which no penalty has been elsewhere provided in the PCPNDT Act.

16. It is not in dispute that all the petitioners fall within the category of class of persons as referred to in section 23 of the PCPNDT Act. The scheme of PCPNDT Act does not classify offences. The provisions of sections 23 and 25 classify the offenders and not the offences. At one hand, specific penalty has been provided for certain class of persons, who are referred in section 23 on contravention of any provision of the PCPNDT Act and the Rules made thereunder, whereas no penalty has been provided for others, if they do the same and section 25 is there to take care of them.

17. A careful examination of the provisions of the PCPNDT Act and the Rules of 1996 will reveal that no penalty has been provided in the PCPNDT Act for many class of persons and if such class of persons contravene the provisions of the PCPNDT Act or rules made thereunder, the provisions of section 25 will be applicable in their cases. For example, in section 3A no penalty has been provided for a person including a specialist or a team of specialists in the field of infertility, who shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both though it is specifically barred. Similarly, in section 3B no penalty has been provided for a person, who sells any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any unregistered Genetic Counselling Centre, etc. In the case of the petitioners, section 23 of the PCPNDT Act is only applicable as all the petitioners belong to the class of persons as referred to in this section. Therefore, the contention of the petitioners to the effect that their action of contravening the provisions of the PCPNDT Act and rules made thereunder may be treated as minor offence is bereft of any merit and liable to be rejected.

18. The next argument of the petitioners that the complaints against them have not been filed by the appropriate authority or by the authorized person is without any merit because in every complaint, the person, who has submitted the complaint has clearly mentioned his/her authority to file the complaint. It is worthwhile to note that every complaint is not required to be filed by the appropriate authority only and any person authorized by the appropriate authority can also file complaint. The Full Bench of Gujarat High Court in *Suo Motu Vs. State of Gujarat*, (2009) CriLJ 721 : (2008) 3 GLH 644 : (2009) 1 GLR

64 has held as under:

?5. A conjoint reading of the above provisions would clearly indicate a well-knit legislative scheme for ensuring a strict and vigilant enforcement of the provisions of the Act directed against female foeticide and misuse of pre-natal diagnostic techniques. In fact, the use of those techniques are restricted to the purpose of detection of any of the abnormalities or diseases enumerated in sub-section (2) of section 4 of the Act. The provisions are stricter in case of conduct of pre-natal diagnostic techniques on a pregnant woman, requiring her written consent and determination of sex of a foetus is prohibited by the provisions of sections 5 and 6. Constitution of "Appropriate Authority" under section 17 is clearly meant to ensure proper and vigorous implementation of the Act; and it is expressly prescribed as one of its functions to take legal action against the use of any sex-selection technique. That authority, where appointed for the whole of a State or Union Territory, has to consist of three members. And when it is appointed for a part of the State or a Union Territory, it could consist of an officer of such rank as the Government concerned may deem fit.?

19. So far as the contention of the petitioners that non-reaching of Form-F to the appropriate authority before the fifth day of the month cannot be termed as a contravention of sub-rule (8) of Rule 9 is concerned, the same is also liable to be rejected in view of the decision of Coordinate Bench of this Court at Jaipur Bench in S.B. Cr.Misc. Petition No. 1828/2013, Dr. Ravi Mohan Mahawar v. State of Rajasthan and Anr. and a bunch of criminal misc. Petitions decided on 07.07.2015, wherein it is held that the violation of various provisions of the PCPNDT Act and rules made thereunder in reference to Form "F" and other illegalities cannot be ignored. The relevant portion of the order dated 07.07.2015 is quoted hereunder:

?The other common argument raised by the learned counsel for petitioners was in reference to Form "F". It was submitted that incomplete or non-filling of Form "F" does not amount to offence. It is looking to the fact that Form "F" can be submitted in the department on or before appointed date, thus can be filled at any time. I do not find substance in this argument. When Form "F" is to be filled before diagnosis, then requirement aforesaid cannot be ignored. It cannot be that details of the patient may be noted on the loose paper and then filled in Form "F" after lapse of few days. In that eventuality, how signature/thumb impression of the patient would be obtained on the Form. It cannot be on a blank Form. Form "F" is to be filled so that all 21 the details of each patient are maintained and are duly verified by her by putting thumb impression or signature on the Form. In view of above, I am unable to accept judgment of Bombay High Court in the case of Dr. Alka (supra) wherein filling of Form "F", after few days, is held to be permissible. The violation of various provisions of the Act and Rules made thereunder in reference to Form "F" and other illegalities cannot be ignored. The complaint so as the order of cognizance and even order of revisional court cannot be quashed on the aforesaid ground.?

20. Full Bench of Gujarat High Court in *Suo Motu v. State of Gujarat* (supra) has also taken into consideration the matter regarding deficiency and inaccuracy in keeping the record in prescribed manner and held as under:

?(iv) Deficiency or inaccuracy in filling Form F prescribed under Rule 9 of the Rules made under the PNDT Act, being a deficiency or inaccuracy in keeping record in the prescribed manner, it is not a procedural lapse but an independent offence amounting to contravention of the provisions of section 5 or 6 of the PNDT Act and has to be treated and tried accordingly. It does not, however, mean that each inaccuracy or deficiency in maintaining the requisite record may be as serious as violation of the provisions of section 5 or 6 of the Act and the Court would be justified, while imposing punishment upon conviction, in taking a lenient view in cases of only technical, formal or insignificant lapses in filling up the forms. For example, not maintaining the record of conducting ultrasonography on a pregnant woman at all or filling up incorrect particulars may be taken in all seriousness as if the provisions of section 5 or 6 were violated, but incomplete details of the full name and address of the pregnant woman may be treated leniently if her identity and address were otherwise mentioned in a manner sufficient to identify and trace her.?

21. This Court is of the opinion that in the cases of only technical, formal or insignificant lapses in filling up the forms or maintenance of record, the trial court can take a lenient view while imposing punishment upon conviction.

22. So far as another contention raised on behalf of the petitioners to the effect that the trial court has taken cognizance against the petitioners on time barred complaints without affording opportunity of hearing to them, is also considered but for rejection only.

23. Section 473 CrPC empowers the court to extend period of limitation in certain cases if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice.

24. In S.B. Cr. Misc. Petition Nos. 838/2015, 848/2015, 716/2013 and 670/2015, the trial court, after taking into consideration the application under section 473 CrPC has found that the reasons for filing the complaint with delay are satisfactorily explained, therefore, before taking cognizance, accepted the application for extension of time while reserving the right of the accused-persons to raise objection regarding condoning the delay. Later on when the accused-persons appeared before it, the trial court has considered the objections raised by them regarding delay and decided the same.

25. In S.B. Cr.Misc. Petition Nos. 838/2015, 848/2015 and 670/2015, the petitioners also approached the revisional court against the rejection of their objections regarding the condonation of delay and the revisional court has rejected the revision petitions. It is noticed that in those revision petitions, the petitioners have not taken this ground that before condoning the delay, no

opportunity of hearing was provided to them.

26. Be that as it may, the trial court before taking cognizance against the petitioners of the above mentioned petitions, had condoned the delay after satisfying itself from the reasons given in the application for extension of time under section 473 CrPC. Hence, no illegality can be found in the orders passed by the trial court.

27. Many of the petitioners have approached this Court under section 482 CrPC against the complaints or orders of taking cognizance or framing of charges without filing the revision petitions before the revisional courts. The Hon''ble Supreme Court in Mohit alias Sonu & Anr. v. State of U.P. & Anr., (supra) has held as under:

?27. The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-?-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482 Cr.P.C. or Section 151 CPC cannot and should not be restored to.?

28. Thus, law laid down by the Hon''ble Supreme Court in above referred case also disentitles those petitioners to get any relief from this Court under section 482 CrPC.

29. In some of the cases, the petitioners have approached the revisional courts against the orders of taking cognizance or framing of charges and the revisional courts have dismissed those revision petitions. However, the petitioners have challenged the orders of revisional court by way of criminal misc. petitions. Essentially the criminal misc. petitions filed by the petitioners against the orders of the revisional courts are in fact second revision petitions, which are specifically barred as per the provisions of section 397(3) CrPC.

30. A Coordinate Bench of this Court in Ashish Singhal v. State of Rajasthan & Anr. (supra) has held as under:

?It would, further, be necessary to observe that after exhausting the remedy of revision, a petition under Section 482 of Cr.P.C. would not be maintainable except in exceptional cases. It is otherwise considered to be nothing but a second revision petition barred by the provisions of Cr.P.C., I do not find that a case of exceptional nature is made out for causing interference in the order of Revisional Court to entertain this petition under Section 482 of Cr.P.C., thus for all these reasons and finding no merit in this criminal misc. petition, it is dismissed.?

31. In the Cr. Misc. Petitions filed against the orders of revisional courts, the learned counsels have failed to show any exceptional circumstances to maintain these petitions, therefore, the same are also not liable to be entertained.

32. I have also scanned the material available on record in S.B. Cr. Revision Petition No. 504/2012 and found that the petitioners have filed this revision

petition against the order passed by the Special Additional Chief Judicial Magistrate (PCPNDT Act Cases) Jodhpur Metropolitan without filing the revision petition before the concerned revisional court. Hence, the same is not maintainable. Otherwise also, the Special ACJM (PCPNDT Act Cases), after taking into consideration the entire material available on record has ordered for framing of charges against the petitioners for the offence punishable under section 3(1) and 23(1) of the PCPNDT Act and after going through the material available on record, this Court is of the opinion that sufficient evidence is available on record to frame aforementioned charges against the petitioners.

33. The judgments cited by the learned counsels for petitioners need no elaboration as facts of those cases are distinguishable so as the ratio propounded therein.

34. In view of the above discussions, I do not find any merit in these petitions. Hence, all the criminal misc. petitions as well as the revision petition (S.B. Cr. Revision Petition No. 504/2012) are dismissed. Stay order passed by this Court are vacated. Stay petitions also stand dismissed.

35. Before parting with the matters, I would like to add that it is not in dispute that in Indian Society discrimination against girl child still prevails either as there is no change in the mind-set or there is also insufficient education. Even after passing of 68 years of independence, we are not in a position to change mental set-up which favours a male child against a female. Advance technology is being used for removal of foetus. The misuse of modern science and technology by preventing the birth of girl child by sex determination before birth and thereafter abortion is evident from 2011 Census figures which reveal greater decline in sex ratio in several States and the State of Rajasthan is also not an exception. An activity for sex selection has very grave social consequences as it may result in disturbing the balance in the male female ratio. Earlier methods of female foeticide were relatively confined to limited section of the population but now-a-days by using the modern scientific methods, which the PCPNDT Act seeks to bring its purview, sex selection has become a rampant phenomena which has affected every strata of society. In view of above fact situation, strict compliance of the provisions of the PCPNDT Act and the rules made thereunder is the need of the day.

36. As the cases against the petitioners for the commission of offences under the PCPNDT Act are pending before the trial courts from long period, therefore, it is directed that the trial courts shall try and decide such cases with utmost priority.