
(2014) 08 BOM CK 0220

In the Bombay High Court

Case No : Criminal Writ Petition No. 206 of 2013

Vinod

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Citation : (2015) ALLMR(Cri) 1530

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : R.N. Dhorde, Sr. Advocate i/b. Pravin Patil, Advocate, for the Appellant; V.H. Dighe, APP, for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.?Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties taken up for final hearing. I have heard Shri R.N. Dhorde, learned Senior counsel i/b. Shri Pravin Patil, advocate for the petitioner, and Shri V.H. Dighe, learned Additional Public Prosecutor for respondent Nos. 1 and 2.

2. The only point that is agitated before this court by the learned Senior counsel is that Regular Criminal Case No. 354 of 2011 filed against the present petitioner is filed by a person who, on the date of filing of the complaint, was not competent to file the said complaint.

3. The complaint under Sections 4(3), 5, 6, 29 r/w 28 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 and under Rule 9(1)(4), 10(1A) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 read with Sections 23 and 24 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003, was filed on 28.9.2011 before the court of Judicial Magistrate, First Class, Chalisgaon. The said complaint is filed by Dr. B.P. Baviskar, Medical Superintendent, Rural Hospital, Chalisgaon as an appropriate

authority, but since the only question of authority and competence to initiate or launch the prosecution against the present petitioner is agitated, this court is restricting this judgment only in that respect.

4. Section 28 of the Act reads as under:--

"28. Cognizance of offences.

1. No court shall take cognizance of an offence under this Act 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. Explanation.--For the purpose of this clause, "person" includes a social organisation.

2. No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

3. Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person."

5. According to the learned Senior counsel, on the date of filing of the complaint the post of Medical Superintendent at Rural Hospital, Chalisgaon was vacant and no charge was given to Dr. Baviskar as a Medical Superintendent. In order to buttress his argument, he invited my attention to the judgment delivered by this court in Writ Petition No. 90 of 2014, which was filed by the present petitioner against the Civil Surgeon, Civil Hospital, Jalgaon and the Medical Superintendent, Rural Hospital, Chalisgaon. By the said Writ Petition, the question in respect of the validity and legality of the action of sealing of the sonography machine, which occurred on 13.8.2011, was questioned. The sealing of the sonography machine was done by the Medical Superintendent, Rural Hospital, Chalisgaon, who was respondent No. 2 in the said Writ Petition, which is an authority to launch the present prosecution.

6. The learned Additional Public Prosecutor Shri Dighe submitted that, in fact from the order, dated 30.9.2013, it is clear that Dr. B.P. Baviskar was the competent authority under the Act. He has handed over the communication in that respect to this court during the course of the arguments. The same is taken on record and marked "X" for identification purpose.

7. So far as the order dated 30.9.2013 is concerned, the learned Senior Counsel has rightly pointed out to this court that this particular order was considered by this court in the judgment dated 11.3.2014 in Writ Petition No. 90 of 2014. There is a specific reference in paragraph 5 of the said judgment, which is reproduced as under:--

"Learned AGP has tried to counter submissions referring to Exhibit R-1 dated 30.09.2013 which purports to empower medical office Class II with the functions of drawing and disbursing office and additionally purports to inform that the earlier officer had been appointed as appropriate authority under the P.C.P.N.D.T. Act.

...."

After considering the said communication, this court clearly recorded a finding that the said communication is of 30.9.2013, and therefore, the action taken by him prior to that cannot stand to the scrutiny of law, in as much as at that particular point of time he was not an appropriate authority under the Act.

8. The learned Senior counsel also pointed out the reply given by the Medical Officer, Rural Hospital, Chalisgaon in pursuance to the information sought under the Right to Information Act. The said reply is at Exh. P2 page 110 of the compilation of this writ petition. The reply given by the Medical Officer, Rural Hospital, Chalisgaon to one Sou. Ratnaprabha Avinash Yewale under the Right to Information Act is placed on record along with Criminal Application No. 4963 of 2013, which application is filed in the present Writ Petition and which application was to be considered at the time of hearing of the present Writ Petition. At page 15 of the said application, it is clear that the post of Medical Superintendent is lying vacant from 26.7.2014.

9. In view of the fact that this court on earlier occasion has specifically recorded that when sealing of the sonography machine was done, that time Dr. Baviskar was not the competent authority under the Act and since no material is placed on record to show that on 28.9.2011 he was the appropriate authority and/or he was authorised either by the State Government or the Central Government or by the appropriate authority to launch and initiate the prosecution by filing the complaint before the learned Magistrate. I see no reason to disagree with the submissions made by the learned counsel for the petitioner that the present complaint is filed by the incompetent person, and therefore, it needs to be quashed.

10. Hence, Regular Criminal Case No. 354 of 2011. pending on the file of the Judicial Magistrate, First Class, Chalisgaon is hereby dismissed, as it is not filed either by the appropriate authority or any officer duly empowered by the State Government, the Central Government or the appropriate authority. In the result, the petition is allowed. No costs. Rule is made absolute in the above terms.