(205) **CRR-2686-2010 (O&M)**
Reserved on : 20.03.2026
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Pushap Lata ......Petitioner

Versus

State of Punjab & another ......Respondents

CORAM : HON'BLE MR.JUSTICE RAMESH CHANDER DIMRI

Present:- Mr.Aman Bansal, Advocate, for the petitioner.

Mr.Kuljeet Singh, Addl.A.G., Punjab.

RAMESH CHANDER DIMRI, J. :

1. This judgment shall dispose of a Criminal Revision Petition filed against the judgment dated 23.09.2010 passed by the Learned Addl.Sessions Judge, Barnala (for brevity, 'Appellate Court') by which an appeal filed by the petitioner/accused (for brevity, 'petitioner') against the judgment of conviction dated 10.05.2010 and an order of sentence of that very date passed by Learned Judicial Magistrate 1st Class, Barnala (for brevity "Magistrate"), arising out of a complaint under Section 28(1) of The Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for brevity, '1994 Act') for violation of Section 29 of the said Act and Rules 9(1) and 9(4) of The Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for brevity, '1996 Rules') punishable under Section 23(1) of the 1994 Act was dismissed except for reduction of sentence of rigorous imprisonment for two years to

was confirmed.

2. Facts necessary for disposal of the present petition are that the respondent No.2/complainant (for brevity 'complainant') filed the above-stated complaint against the petitioner thereby alleging that he has been appointed as a Sub-Divisional Appropriate Authority under Section 17(2) of the 1994 Act through Punjab Government Gazette notification dated 20.06.2001. The petitioner is owner of M/S Mittal Maternity & Scan Centre, Barnala. She applied for registration under 1994 Act on 23.06.2001. The District Appropriate Authority Sangrur, issued a certificate of registration for the said clinic and approved diagnostic procedure of ultrasound to be carried out in the same for a period of 5 years ending 31.12.2005. Premises of the said clinic were inspected by a team headed by the complainant on 19.01.2005. Other members of the team were Dr.Sunita Goel, Medical Officer, Civil Hospital, Barnala and Shri Devinder Kumar, Cashier, office of Senior Medical Officer, Civil Hospital, Barnala. After investigation, the said team noticed as under:

> *"(a) Records required to be maintained under the Act/rules were not properly maintained (details explained in subsequent paras). Some of the records were not all together preserved. It amounts to violation of Section 29 of the PNDT Act.*
>
> *(b) Record keeping of Forms 'F' was not as per guidelines provided in the Act. Besides other discrepancies none of the 49 forms inspected bore the signature of the Doctor*

attached as Annexure C3 to C51).

(c) Four referral slips of the ultra sound parients were not produced.

(d) Ultrasound films w/r to all the 49 Forms mentioned at (b) were not produced."

3. He then alleged in the complaint that the said discrepancies violate Rules 9(1) and 9(4) of the 1996 Rules and the said team collected following record from the said clinic:

"(i) 49 Forms 'F' dated 01.01.2005 to 19.01.05 (photo copies of the Forms enclosed as annexure C3 to C51).

(ii) The photo copies of the register (supplied by the complainant to the accused) for the period 09.11.04 to 30.12.04 (Photo copies of the same are attached as annexure C52 to C56)."

4. The complainant then alleged that copy of the inspection report was supplied to the petitioner at the spot. Ultrasound machine installed in the clinic was sealed by the complainant. A search memo was prepared. Thereafter the complainant concluded that it will not be in the fitness of things as well as in the interest of general public to allow the said clinic to conduct pre-natal diagonostic procedure. Accordingly the complainant, vide its letter dated 20.01.2005, suspended registration of the said clinic with immediate effect. Appeal filed by the petitioner before Civil Surgeon/District Appropriate Authority, Sangrur was rejected by the said authority through its letter dated 24.03.2005. The said authority did

was conveyed to the petitioner vide letter dated 16.05.2005. The complainant remained on medical leave for about 22 days thereafter and was then posted as Civil Surgeon, Faridkot in the first week of June, 2005. Latest order of Civil Surgeon-cum-District Appropriate Authority, Sangrur to initiate further action in the matter was conveyed to the complainant vide letter dated 22.07.2005. In this manner, the petitioner has violated provisions of the 1994 Act and 1996 Rules. By doing so, she had committed offences under the same. The complainant ultimately prayed in the complaint that the petitioner may be dealt with under Section 23(1) read with Section 28(1) of the 1994 Act. With the complaint, the complainant also appended documents Annexures C1 to C59.

5. On receipt of the complaint, the concerned Magistrate issued notice thereof to the petitioner. Upon service, she appeared. She also filed **Crl.Misc.No.8962-M of 2006** titled as **"Dr.[Mrs.] Pushap Lata Mittal Vs. Dr.S.P.Gupta, Civil Surgeon Faridkot"** before this Court. In it, further proceedings before the concerned Magistrate were ordered to be stayed. The said stay order remained in force for a long time. Vide order dated 15.01.2008, the said petition was dismissed. In pre-charge evidence, the complainant examined himself and Cashier Devinder Kumar as CW1 and CW2. After closure of pre-charge evidence, the concerned Magistrate heard parties on framing of charges against the petitioner. Vide order dated 24.12.2009, it charge-sheeted the petitioner under Section 29(1) read with Section 28 of the 1994 Act. Thereafter, at request of the petitioner, both the above-stated witnesses were permitted to be further

CW3 Dr.Sunita Goyal. On conclusion of evidence of the complainant, statement of the petitioner under Section 313 of the Code of Criminal Procedure, 1973 (for brevity "1973 Code") was recorded. In such statement, she denied the incriminating evidence put to her. In her defence, she examined DW1 Bharat Modi and DW2 Navdeep Gupta, Handwriting and Finger Prints Expert. After closure of evidence, the Learned Magistrate heard parties on merits of the case. After such hearing, it, through the impugned judgment dated 10.05.2010, convicted the petitioner under Section 29(1) of the 1994 Act punishable under Section 23 of the said Act and accordingly, vide order of that date, sentenced her to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.5000/-. In default of payment of fine, she was further sentenced to undergo rigorous imprisonment for 2 months.

6. Aggrieved of the said conviction and sentence, the petitioner filed an appeal. However, the same was dismissed by the Learned Appellate Court vide impugned judgment dated 23.09.2010. Aggrieved of the said dismissal, the petitioner is in revision before this Court.

7. I have heard Shri Aman Bansal, Advocate for the petitioner and Shri Kuljeet Singh, Learned Addl.A.G., Punjab, on merits of the Revision Petition. With their assistance, I have perused summoned record.

8. Learned counsel for the petitioner has argued that the search in question was not made in terms of the relevant provisions of the above-said Act and Rules. Since the same was in violation of the said provisions, it has no sanctity in law. Copy supplied to the petitioner is not true copy

indict her in the case in question. In view thereof, a doubt is cast upon the prosecution case and its evidence. Defence raised by the petitioner is a plausible defence and ought to have been believed/accepted by the Learned Courts below. A serious prejudice has been caused to the petitioner by the impugned judgments and order. The same are perverse as well as contrary to the evidence on record. The petitioner is now aged more than 80 years and leniency may be shown to her in the matter of sentence also. He has accordingly prayed for acceptance of the petition.

9. On the other hand, Learned Addl.A.G., Punjab has argued that documents Ex.C1 to C59 show that the petitioner did not follow the provisions contained in the 1994 Act and 1996 Rules. Such non-following is punishable under the above-mentioned provisions of the said Act and Rules. Documents Ex.C3 to C56 all belong to the clinic of the petitioner. Even if some procedural violations in respect of search are there, since the said documents belonged to the petitioner and her clinic, the said violations, in the facts/circumstances of the present case, deserve to be overlooked. The impugned judgments and order are self-speaking calling for no interference in revision. He has accordingly prayed for dismissal of the revision petition.

10. After such hearing and perusal, I may state that revisional powers of this Court can be exercised in terms of Section 401 of 1973 Code. Since the petitioner has filed a revision petition against the impugned judgments and order, it has to be dealt within the parameters

under:-

*“**<u>401. High Court's powers of revision</u>.**—*

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was

and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

11. I may also state that in respect of scope of revisional powers of a High Court, a three Judge Bench of Hon'ble the Supreme Court, in the report **"Pakalapati Narayana Gajapathi Raju & others Vs. Bonapalli Peda Appadu & another", (1975) 4 SCC 477**, observed as under:-

"3. Section 439 (1) of the Code of Criminal Procedure provides that in exercise of revisional jurisdiction, the High Court may exercise any of the powers conferred on a court of appeal. This provision is made expressly subject to sub-section (4) of Section 439 under which nothing contained in the section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. Section 439 has been interpreted in several decisions of this Court which have taken the view that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, ought not to be exercised lightly and that it can be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice.(See ***Satyendra Nath Dutta v. Ram Narain, (1975) 3 SCC 398****;* ***Akalu Ahir v. Ramdeo Ram, (1974) 1 SCR 130****;*

***3 SCR 867**. It is clear from these decisions that the revisional jurisdiction cannot be invoked merely because the lower court has not appreciated the evidence properly. The High Court has in its judgment referred to the decisions of this Court but in applying those decisions it has transgressed the limits of its revisional powers.”*

12. In respect of scope of revisional powers of a High Court, a three Judge Bench of Hon’ble the Supreme Court, in the report **“Duli Chand Vs. Delhi Administration”, (1975) 4 SCC 649**, observed as under:-

> *“4. …… Now, the jurisdiction of the High Court in a Criminal Revision Application is severally restricted and it cannot embark upon reappreciation of the evidence, but even so, the learned single Judge of the High Court who heard the revision application, examined the evidence afresh at the instance of the appellant. This was, however, of no avail, as the learned single Judge found that the conclusion reached by the lower Courts that the appellant was guilty of gross negligence, was correct and there was no reason to interfere with the conviction of the appellant. …..*
>
> *5. …..The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding*

Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse. The High Court came to the conclusion that the evidence clearly established that the death of the deceased was caused on account of the negligent driving of the bus by the appellant. .....".

13. In respect of such powers, a two Judge Bench of Hon'ble the Supreme Court, in the report **"Janata Dal Vs. H.S.Chowdhary", (1992) 4 SCC 305**, observed as under:-

"130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal Courts - a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some undeserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.

132. The criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

14. While quoting observations made in **Janata Dal's report (supra)** with approval, a three Judge Bench of Hon'ble the Supreme Court, in the report "**T.N.Dhakkal Vs. James Basnett & another", (2001) 10 SCC 419**, observed as under:-

"9. We are in agreement with the above exposition of law. We are of the opinion that though the High Court has revisional jurisdiction under Section 401 of the Code and can exercise its discretionary jurisdiction to correct miscarriage of justice, but whether or not, there is justification for the exercise of that discretionary jurisdiction would depend upon the facts and circumstances of each case. The controlling power of the High Court under Section 401 of the Code being discretionary is required to be exercised only in the interest

each particular case and not mechanically."

15. In respect of revisional jurisdiction of a High Court, a two Judge Bench of Hon'ble the Supreme Court, in the report **"State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri", (1999) 2 SCC 452**, observed as under:-

> *"Having examined the impugned Judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring*

would otherwise tentamount to gross miscarriage of justice."

16. Observations made in **Duli Chand's report (supra)** and those made in a report **"State of Orissa Vs. Nakula Sahu", (1979) 1 SCC 328** as well as **Puttumana Illath's report (supra)** were approved by a three Judge Bench of Hon'ble the Supreme Court in the report **"Raj Kumar Vs. State of Himachal Pradesh", (2008) 11 SCC 76**.

17. Applying the above reproduced observations to the present case, I may state that the 1994 Act is a social welfare legislation. It is a law enacted to prohibit sex selection leading to female foeticide. It in fact aims to arrest the declining sex ratio in our country. It's objectives declare that it provides for prohibition of sex selection before or after conception and for regulation of pre-natal diagnostic techniques for preventing misuse thereof for sex determination leading to female foeticide and for matters connected therewith or incidental thereto. It was conceived in the light of the skewed sex ratio in our country and to avoid the consequences of the same. It is an effort to save the girl child. It's focus is to preserve right to life of a girl child under Article 21 of our Constitution. It's Section 4 regulates pre-natal diagnostic techniques whereas Section 6 thereof prohibits sex determination. Section 23 of the said Act talks of offences and penalties under it. Section 29 of the said Act regulates maintenance of records. The said section is reproduced as under:

> *"**29. Maintenance of records**.-(1) All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved*

prescribed:

Provided that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the records and all other documents of such Centre, Laboratory or Clinic shall be preserved till the final disposal of such proceedings.

2. All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf."

18. In exercise of the powers conferred under Section 32 of the said Act, the Central Government has made 1996 Rules. Rule 9 thereof also talks of maintenance and preservation of records. The said rule is accordingly reproduced as under:

*"**9. Maintenance and presenration of records**.-[(1) Every Genetic Counselling Centre, Genetic Laboratory, [Genetic Clinic including a Mobile Genetic Clinicl, Ultrasound Clinic and Imaging Centre shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test.]*

(2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counselled shall be as specfied in Form D.

[(3) The record to be maintained by every Genetic Laboratory, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form E.]

including a mobile Genetic Clinic], in respect of each man or woman subjected to any pre-natal diagnostic procedure/ technique/test, shall be as specified in Form F.]

(5) The Appropriate Authority shall maintain a permanent record of applications for grant or renewal of certificate of registration as specified in Form H. Letters of intimation of every change of employee, place, address and equipment installed shall also be preserved a permanent records.

(6) All case related records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by the [Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imagrng Centre] for a period of two years from the date of completion of counselling, pre-natal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records shall be preserved till the final disposal of legal proceedings, or till the expiry of the said period of two years, whichever is later.

(7) In case the [Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic or Ultrasound Clinic or Imaging Centrel maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.

[(8) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall send a complete report in respect of all pre-conception or pregnancy related procedures/techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority.]"

the 1996 Rules, Hon'ble the Supreme Court, in the report **"Federation of Obstetrics and Gynaecological Societies of India (FOGSI) Vs. Union of India", (2019) 6 SCC 283**, observed as under:-

> *"98. Non-maintenance of record is springboard for commission of offence of foeticide, not just a clerical error. In order to effectively implement the various provisions of the Act, the detailed forms in which records have to be maintained have been provided for by the Rules. These Rules are necessary for the implementation of the Act and improper maintenance of such record amounts to violation of provisions of Sections 5 and 6 of the Act, by virtue of proviso to Section 4(3) of the Act. In addition, any breach of the provisions of the Act or its Rules would attract cancellation or suspension of registration of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, by the appropriate authority as provided under Section 20 of the Act.*
>
> *99. There is no substance in the submission that provision of Section 4(3) be read down. By virtue of the proviso to Section 4(3), a person conducting ultrasonography on a pregnant woman, is required to keep complete record of the same in the prescribed manner and any deficiency or inaccuracy in the same amounts to contravention of Section 5 or Section 6 of the Act, unless the contrary is proved by the person conducting the said ultrasonography. The aforementioned proviso to Section 4(3) reflects the importance of records in such cases, as they are often the only source to ensure that an establishment is not engaged in sex determination.*
>
> *100. Section 23 of the Act, which provides for penalties of offences, acts in aid of the other sections of the Act is quite reasonable. It provides for punishment for any medical geneticist, gynaecologist, registered medical practitioner or a*

Clinic or a Genetic Laboratory, and renders his professional or technical services to or at the said place, whether on honorarium basis or otherwise and contravenes any provisions of the Act, or the Rules under it.

101. Therefore, dilution of the provisions of the Act or the Rules would only defeat the purpose of the Act to prevent female foeticide, and relegate the right to life of the girl child under Article 21 of the Constitution, to a mere formality.

102. In view of the above, no case is made out for striking down the proviso to Section 4(3), provisions of Sections 23(1), 23(2) or to read down Section 20 or 30 of the Act. Complete contents of Form F are held to be mandatory......"

20. The complainant says that when clinic of the petitioner was inspected on 19.01.2005, discrepancies/violations/omissions enumerated in the present complaint were detected to have been committed by the petitioner. The complainant then says that the said violations/omissions are contrary to Section 29 of the 1994 Act read with Rule 9 of 1996 Rules. To prove his such stand, the complainant has produced/exhibited documents Ex.C3 to C58 on record. A perusal of the documents Ex.C3 to C51 i.e. copies of Form F prepared by clinic of the petitioner shows that the same do not contain signatures of the Doctor conducting ultra-sonography etc. on the concerned patient/s. Preparation of the said form, as held by the Hon'ble Supreme Court in the above-stated report, is mandatory. The said form is required to be maintained under Rule 9(4) of the 1996 Rules. The petitioner, at no stage, has come forward with a plea that the said documents do not belong to her clinic. May be that at one

Ex.C58. At the same time, she nowhere has come forward with the plea that the documents Ex.C3 to Ex.C51 were not recovered from her clinic on 19.01.2005. Other violations mentioned in the complaint, in the facts/ circumstances of the present case, have categorically been deposed to have been committed by clinic of the petitioner. However the petitioner nowhere has come forward with a plea that documents Ex.C3 to Ex.C51 were not taken into possession from her clinic. Rather, a perusal of document Ex.C58 shows that the said documents were taken into possession from her clinic and reports Ex.C57 & C58 were handed-over to her. CW1 Dr.S.P.Gupta has also deposed in that regard. The said facts/omissions on the part of the petitioner and her clinic, therefore, are clear-cut violations of Section 29 of the 1994 Act read with Rule 9 of the 1996 Rules.

21. Coming to the argument of learned counsel for the petitioner that procedure prescribed in Section 30 of the 1994 Act read with Rule 12 of the 1996 Rules was not followed by the complainant at the time of inspecting the premises in question, I may observe that no doubt the procedure adopted by the complainant at the time of inspecting the clinic of the petitioner does not comply with the said seciton/rule in letter and spirit. At the same time, the said inspection is stated to have resulted into recovery of the above-stated documents from clinic of the petitioner. Only on the ground of non-compliance of the said section/rule meticulously, the documents seized during search of the premises in question which the petitioner does not dispute to be belonging to her clinic, are evidence

question. In fact, in the report **“Radha Kishan Vs. State of Uttar Pradesh”, AIR 1963 SC 822**, in respect of search operations under Sections 103 and 165 of the 1973 Code, a three Judge Bench of the Hon’ble Supreme Court held that even if it is assumed that the search was illegal, the seizure of the articles is not vitiated. In the said report, Hon’ble the Supreme Court observed as under:

> *“5.........So far as the alleged illegality of the search is concerned it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Sections 103 and 165 of the Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues. The High Court has chosen to accept the evidence of the prosecution with regard to the fact of seizure and that being a question to be decided only by the court of fact, this Court would not re-examine the evidence for satisfying itself as to the correctness or otherwise of the conclusions reached by the High Court.........”*

22. In a report **“Dr.Naresh Kumar Garg Vs. The State of Haryana & others”, 2026 SCC Online SC 295**, Hon’ble the Supreme Court, in respect of the evidence collected during an illegal search, observed as under:

Act qua the search carried out by the respondents on Vatika Medicare in as much as it was an individual decision of the Chairperson instead of being the collective decision of the District Appropriate Authority which has vitiated the search, and in this connection we are bound by the ratio laid down by the Coordinate Bench in Ravindra Kumar; we are however of the view that the evidence collected in the course of the search in the form of the seized record etc cannot be discarded altogether, like the baby with the bath water. While the search may be illegal, the materials or evidence gathered or collected in the course of such search can still be acted or relied upon subject to the rule of relevancy and the test of admissibility. We are fortified in adopting such a view by several decisions of this Court a couple of which are by Benches of larger strength.

51. xxx xxx xxx

52. ***R.M. Malkani Vs. State of Maharashtra 1973 (1) SCC 471*** *is a two-Judge Bench decision of this Court. In that case, this Court was examining admissibility of tape recorded conversation. In that context, this Court held that tape recorded conversation is admissible provided, firstly, the conversation is relevant to the matter in issue; secondly, there is identification of the voice; and thirdly, the accuracy of the tape recorded conversation is proved. Rejecting the contention of the appellant that the tape recorded conversation was obtained by illegal means, this Court held that even if evidence is illegally obtained, it is admissible. However, by expressing a word of caution, this Court observed that the Judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. This Court referred to with approval its earlier decision in* ***Magraj Patodia Vs. R.K.***

was procured by improper or even by illegal means could not bar its admissibility provided its relevance and genuineness were proved. Referring to English decisions, this Court held that as long as evidence is not tainted by an inadmissible confession of guilt evidence even if it is illegally obtained is admissible.

53. A Constitution Bench of this Court in ***Pooran Mal Vs. Director of Inspector (Investigation), New Delhi (1974) 1 SCC 345*** *was examining a challenge to search and seizure of certain premises under Section 132 of the Income Tax Act, 1961 on the ground that the authorisation for the search as also the search and seizure were illegal. After referring to various provisions of the Indian Evidence Act, 1872, this Court opined that it had permitted relevancy as the only test of admissibility of evidence; the Indian Evidence Act or any other similar law in force does not exclude relevant evidence on the ground that it was obtained under an illegal search or seizure. Elaborating further, this Court held that courts have a discretion to admit evidence obtained as a result of illegal search. Unless there is an express or necessarily implied prohibition in law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. Finally, the Constitution Bench concluded as under:*

> *25. In that view, even assuming, as was done by the High Court, that the search and seizure were in contravention of the provisions of Section 132 of the Income Tax Act, still the material seized was liable to be used subject to law before the Income tax authorities against the person from whose custody it was seized and, therefore, no Writ of Prohibition in restraint of such use could be granted. It must be, therefore, held that the High Court was right in dismissing the two*

dismissed with costs."

23. Keeping in view the above reproduced observations, documents C3 to C51, despite the fact that at the time of seizing the same, procedure prescribed in Section 30 of the 1994 Act and Rule 12 of the 1996 Rules was not meticulously followed, since the said documents are relevant and admissible in evidence in the present case, could certainly be taken into consideration to decide the matter in question. If the same are taken into such consideration, it is proved that the petitioner and her clinic have violated Section 29 of the 1994 Act read with Rule 9(4) of the 1996 Rules. No doubt the petitioner says that the document Ex.C57 is not the same as is the document Ex.D1. At the same time, a perusal of the document Ex.D1 also shows that it demonstrates that record of ultrasound performed on pregnant mothers was not kept as per declaration of the registration form. It also records that copy of the report of ultra-sonography had not been kept by the clinic of the petitioner. Therefore, contents of the document Ex.D1 also show and establish non-compliance of Section 29 of the 1994 Act and Rule 9 of the 1996 Rules. The said document has been signed by Dr.Sunita Goyal as well as the complainant. It also contains signatures of one Om Parkash and Dr.Surinder. Same is the case with document Ex.C57. It also contains signatures of the said Om Parkash and Dr.Surinder. May be that factum of their signing the said documents has not come on record. At the same time, the document Ex.D1 is stated to have been received by the petitioner herself. She admits the same to have been received by her against her signature. From their signatures on the said document, it can be inferred that they were present

and Rule 12 of the 1996 Rules appear to have been materially complied with at the time of conducting the search in question. Even non-compliance of the said provisions, considering relevancy and admissibility of the documents Ex.C3 to Ex.C51, for what has been observed above, has no significance. The document Ex.D1 specifically mentions that remarks were contained in the report submitted by PW1 Dr.S.P.Gupta. Report in that regard prepared by him is Ex.C58. It establishes violations/omissions done by clinic of the petitioner as referred to above. The said documents have been proved by the prosecution on record. PW1 Dr.S.P.Gupta and CW3 Dr.Sunita Goyal have deposed about the search in question in minute details. The petitioner does not dispute that the search in question took place on the above-stated date and time. She also does not dispute that the above-stated documents were not taken into possession from her clinic on the said date. In the absence of such dispute, it does not lie in the mouth of the petitioner to contend that the impugned judgments and order are liable to be set aside for alleged non-compliance of the said provisions.

24. No doubt the petitioner is stated to be now 80 years old. At the same time, considering the acts/omissions committed by her in violation of the provisions of the 1994 Act and the 1996 Rules, no leniency can be shown to her in the matter of imposition of sentence also.

25. I have also minutely perused the impugned judgments and order. However, I am of the considered opinion that there is no manifest error on the point of law resulting in flagrant miscarriage of justice in the same. They have not caused any mnifest illegality or miscarriage of

revisional jurisdiction. Non-compliance of the procedure prescribed in the 1994 Act and 1996 Rules in the present case has already been held as inconsequential. Findings rendered in the said judgments and order are not perverse or unreasonable. The same do not show neglect of proper precaution or apparent harshness of treatment resulting in undeserved hardship to the petitoner. Interest of justice does not require exercise of revisional power in the present case. Such power cannot be exercised capriciously or arbitrarily and rather it should be exercised based on sound principles. The impugned judgments and order have done real and substantial justice in the matter. Arguments of the learned counsel for the petitioner therefore have no substance and are accordingly rejected.

26. For what has been stated above, I am of the considered opinion that there is no ground to interfere in the impugned judgments and order in the exercise of revisional jurisdiction under Section 401 of the 1973 Code. In turn, the present revision petition is dismissed. All interim application(s), if any, stand disposed of.

10.04.2026 **(RAMESH CHANDER DIMRI)**
Sailesh **JUDGE**

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	