

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.M-421 of 2021(O&M)
Date of Decision: January 20, 2022

Dr.Aparna Singhal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

--

Present: - Mr.Sartej Singh Narula, Advocate
for the petitioner.

Mr.Sandeep Moudgil, Additional Advocate General, Haryana.

-

HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 482 Cr.P.C praying for quashing of FIR No.553 dated 13.12.2020, registered under Section 23 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short "Act") and Section 120-B of the Indian Penal Code, at Police Station Palam Vihar, District Gurugram, along with all subsequent proceedings arising therefrom.

The FIR was registered on the complaint of Dr. Anil Gupta Medical Officer-cum-Nodal Officer under the Act, Office of Civil Surgeon Gurugram submitted to the Station House Officer, Police Station, Palam Vihar, Gurugram. As per the allegations in the FIR on 13.12.2020 a secret information was received by District Appropriate Authority-cum- Civil Surgeon, PC&PNDT Gurugram that a sex determination racket was being

WWW.LIVELAW.IN

run by one Smt.Pinki @ Roma Devi at Dr.Rao's clinic, Kapashera Mor, New Delhi. On receipt of this information the District Appropriate Authority-cum- Civil Surgeon, PC&PNDT Gurugram constituted a team comprising Dr.Anil Gupta, PNDT Nodal Officer-cum-Medical Officer, Gurugram (complainant/respondent No.2), Amandeep Chauhan, Drugs Control Officer, Gurugram, Dr.Harish Kumar, Medical Officer, Gurugram, Dr.Dipanshu, Medical Officer, Gurugram, Subhash Sharma, Clerk in the office of Civil Surgeon, Gurugram. Police help was also taken and Parambir Singh HC and Somvati LHC joined the team. Thereafter, informer Pawan contacted Pinki @ Roma Devi on her mobile phone for getting a sex determination test on a pregnant lady. Pinki @ Roma Devi asked the informer to bring Rs.50,000/- on 13.12.2020 at 10.30 AM for sex determination of the foetus. Thereafter, Kanchan (who gave her name as Pinky w/o Pawan to the petitioner) w/o Karan was approached by the raiding team to act as a decoy patient.. The informer was given Rs.50,000/- to be handed over to Pinki @ Roma Devi for sex determination on 13.12.2020. Serial Numbers of all the currency notes were noted. On 13.12.2020, the decoy patient (Kanchan) and the informer Pawan left for Dr.Rao's clinic, Palam Vihar at 10 AM on their private vehicle bearing No.HR-55-AH-4970. They were followed by the raiding team in another car. After reaching the clinic at 10.30 AM, Hareram Mandal, husband of Pinki @ Roma Devi came outside to the decoy patient and the informer and sat in their car. The informer told the raiding team that the amount of Rs.50,000/- was received by the husband of Pinki @ Roma Devi, who took the decoy patient and the informer to M/s Mantracare X-Ray and Diagnostic Centre, Gurugram. The decoy patient, the informer

and Hareram Mandal went inside the Centre and came out after two hours. Then all three went back to Dr.Rao's clinic, where the raiding team was waiting. On reaching Dr.Rao's clinic, the informer asked Pinki @ Roma Devi about the sex of the foetus, upon which Pinki @ Roma Devi called the petitioner on her mobile phone and then disclosed the foetus as 'female' to the informer. On such disclosure, the members of the raiding team, except Dr.Anil Gupta – respondent No.2 and Amandeep Chauhan immediately apprehended Pinki @ Roma Devi and her husband Hareram Mandal at Dr.Rao's clinic and recovered Rs.34,000/- from Hareram Mandal which were the same which had been given to the informer. After the said recovery, the raiding team informed Dr.Anil Gupta and Amandeep Chauhan, who were waiting outside M/s Mantracare X-Ray and Diagnostic Centre Gurugram. As the Centre was closed for the day, they both called husband of the petitioner Dr.Sumit Singhal on his mobile phone and requested him to conduct a kidney ultrasound of Dr.Anil Gupta. When Dr.Sumit Singhal opened the Centre and conducted the ultrasound of Dr.Anil Gupta, the raiding Team immediately reached at the Centre from Dr.Rao's clinic and apprehended the petitioner and recovered Rs.16,000/- from her which were the same that had been given to the informer.

Form F was checked. It was found that without any details of the identity proof of the patient ultrasound was conducted by the petitioner which is violation of Rule 9. The PNDT Register had an entry in the name of Pinki w/o Pawan (informer). Form F had a referral of Dr. Rao's Clinic which had been given by Pinki @ Roma Devi in the name of Dr. (Mrs.) S. Rao.

Mr. Sartej Singh Narula Ld. counsel for the petitioner has primarily contended that as per the provisions of the Act an FIR for an offence under the Act cannot be registered except on the complaint of the duly notified District Appropriate Authority (DAA)- which is a body comprising of three members. The constitution of the Authority is specified in Section 17 of the Act which is as under:

Section 17. Appropriate Authority and Advisory Committee

17. Appropriate Authority and Advisory Committee.—(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union Territories for the purposes of this Act.

(2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.

(3) The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,—

[(a) when appointed for the whole of the State or the Union Territory, consisting of the following three members—

(i) an officer of or above the rank of the Joint Director of Health and Family Welfare—Chairperson;

(ii) an eminent woman representing women's organisation; and

(iii) an officer of Law Department of the State or the Union Territory concerned:

Provided that it shall be the duty of the State or the Union Territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:

Provided further that any vacancy occurring therein shall be filled

WWW.LIVELAW.IN

within three months of the occurrence.]

(b) when appointed for any part of the State or the Union Territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

(4) The Appropriate Authority shall have the following functions, namely:—

(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;

(b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;

(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action; and

(d) to seek and consider the advise of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;

[(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, *suo motu* or brought to its notice and also to initiate independent investigations in such matter;

(f) to create public awareness against the practice of sex selection or pre-natal determination of sex;

(g) to supervise the implementation of the provisions of the Act and rules;

(h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.]

In the present case, the FIR was lodged on the complaint of respondent No.2, who is not even a Member of the District Appropriate

Authority Gurugram. WWW.LIVELAW.IN Nor has he been authorized by the District Appropriate Authority to file the FIR.

He also referred to Section 28 of the Act which debars a Court from taking cognizance of an offence under the Act except on the complaint of the Appropriate Authority concerned or any person authorised in this behalf by the Central or State Government or the Appropriate Authority.

Section 28 is 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 the State Government, as the case may be, or the Appropriate Authority; or
- (b) a person who has given notice of not less than $\frac{1}{2}$ [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.

He also relied on a decision of a Division Bench of this Court in CRM-M- No. 4211 of 2014 Hardeep Singh Vs. State of Haryana and Ors.

He also contended that the search and seizure had not been conducted in compliance with Section 30(2) of the Act which requires that all searches and seizures under the Act have to be in consonance with the provisions of the Code of Criminal Procedure. He contended that no spot recovery memo was prepared in the presence of the petitioner or any witness

WWW.LIVELAW.IN

nor was the same got signed by her . No copy thereof was given to her.

The arguments of Sh. Narula have been strenuously countered by Sh. Moudgil Ld. Additional Advocate General Haryana.

He has referred to the reply filed on behalf of the State wherein it is stated that after receipt of the secret information regarding illegal business of sex determination by the Civil Surgeon, Gurugram the same was communicated to the other members of the District Appropriate Authority, Gurugram. Then the District Appropriate Authority under the PNDDT Act authorised respondent No. 2 and other team members to take legal action as required. A copy of the authorization letter has been annexed as Annexure R-1. It is stated that after the raid the entire incident was brought to the notice of the three member DAA which after considering the facts and circumstances asked respondent No. 2 to initiate legal proceedings against the accused including the petitioner.

It is asserted in the reply that the team had prepared Spot Memo, Seizure Memo and recorded statements at the spot of the petitioner and other accused. The petitioner, other accused and all members of the team affixed their signatures on all the documents and sealed articles. A copy of the Seizure Memo has been annexed as R-2.

It is stated that CCTV footage of the incident was taken from the spot as evidence of the conduct of the sex determination test. It was found that Mrs. Pinki and her husband Hareram were generating fake referrals and running a nexus to cheat the public as they are not qualified for the purpose of issuing referrals for conducting ultrasound of pregnant females.

It is stated that respondent No. 2 after authorization by the three member District Appropriate Authority lodged the FIR against the petitioner and other accused after they were found to be engaged in illegal business of sex determination. The police is investigating the matter and after completion of investigation, the police would file a 'Kalandra' before the District Appropriate Authority, Gurugram. Thereafter a criminal complaint along with Kalandra would be filed against the accused as per Section 28 of the Act before the Chief Judicial Magistrate, Gurugram.

Question for consideration

The primary contention of the petitioner is whether the registration of the FIR and the consequent investigation is illegal as the FIR was not registered on the complaint of the District Appropriate Authority? The question of registration of FIR under the Act has been considered by a Division Bench of this Court in Hardeep Singh's case (supra) where three questions which had been referred to it were considered.

The questions referred were:

- 1. Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?*
- 2. Whether the report under Section 173 CrPC along with the complaint of an Appropriate Authority can be filed to the Court?*
- 3. Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?*

The Division Bench answered the questions as under :

In the circumstances, the questions as formulated in the reference are

WWW.LIVELAW.IN
answered in the following manner, that :-

- (1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.
- (2) A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.
- (3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.

In answer to question No. 3 it was specifically held that FIR can be lodged and the offences under the Act can be investigated by the Police but cognizance can be taken by the Court only on the complaint as per Section 28 of the Act.

This point was elucidated in the judgment as under:

“.....Therefore, with the offence being cognizable under the Act which would be under any other law like the Act in the present case, the police officer can arrest an accused without a warrant; besides, it can investigate the offence also in accordance with the provisions of the CrPC except subject to the limitation placed by the Act. It would be difficult to comprehend a situation where information is received by the Police of a cognizable offence having been committed but it would be barred to investigate the same. Therefore, in order to investigate a case relating to commission of a cognizable offence, the police would be duty bound to investigate the same for which an FIR would have to be registered although the cognizance of the same would be taken by the Court only on the

WWW.LIVELAW.IN

basis of a complaint filed by any of the person as mentioned in Section 28 of the Act. In fact in order to investigate a case, registration of an FIR by the Police has been held to be necessary and without which a crime cannot be effectively investigated.

The Supreme Court in Mohindro v. State of Punjab, (2001) 9 SCC 581 considered the grievance of the appellant in the said case wherein she had approached the authority for registering a case (FIR) against the alleged accused persons but the police never registered a case and never put the law in motion. She failed in an attempt in the High Court to get a case registered. She then approached the Supreme Court. Pursuant to the notice issued, the respondents entered appearance. Learned Counsel for the State of Punjab submitted that there had been an inquiry. The Supreme Court said that it failed to understand as to how there could be an inquiry without registering a criminal case. The judgment in Mohindro's case was followed in Shashikant v. CBI, (2007) 1 SCC 630. It was held in Shashikant's case (supra) that registration of a case is a sine qua non for starting investigation. Only when an FIR is lodged, the officer in charge of the Police Station is statutorily liable to report thereabout to a Magistrate who is empowered to take cognizance in terms of Section 157 (1) CrPC.

Therefore, the position is that though in respect of an offence under the Act, FIR can be registered and investigation conducted; however, cognizance can only be taken on the complaint of any of the persons as mentioned in Section 28 of the Act. The stage for filing the complaint has not yet reached in the present case as the matter is stated to be still under investigation. Therefore, at this stage the FIR is not liable to be quashed on the ground that the Court cannot take

WWW.LIVELAW.IN

*cognizance except on the complaint in writing of the
Appropriate Authority.”*

The position in the present case is that FIR has been lodged on the complaint of respondent No. 2. It is the case of the respondents that the police is investigating the matter and after completion of investigation, the police would file a 'Kalandra' before the District Appropriate Authority, Gurugram. Thereafter a criminal complaint along with Kalandra would be filed against the accused as per Section 28 of the Act before the Chief Judicial Magistrate, Gurugram.

In the light of the clear exposition of law by the Division Bench in Hardeep Singh's case (supra) no case for quashing the FIR and the ongoing investigation is made out.

It would be open to the petitioner to raise all the other contentions at an appropriate stage during trial.

The petition is accordingly disposed of.

January 20, 2022

gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No