

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-36146-2021 (O&M)

Date of Decision: 02.04.2022

Dr. Anant Ram ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Abhishek Sethi, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana
assisted by SI Surinder.

(proceedings conducted through video conferencing)

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GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking quashing of FIR No.474 dated 14.7.2021 under Sections 23, 3(1), 3A, 4, 5(2), 6(b) of the Pre-Conception and Pre Natal-Diagnostic Techniques Act, 1994 (hereinafter referred to as the PNDT Act) and Sections 120-B/34 of IPC at Police Station Barwala, District Hisar and all subsequent proceedings emanating therefrom.
2. The FIR was lodged at the instance of Dr. Prabhu Dayal, Nodal Officer, PNDT, Civil Hospital, Hisar. The story unfolded in the FIR is that Civil Surgeon-cum-Chairman, District Appropriate Authority, Fatehabad received a secret information to the effect that illegal sex determination was being carried on. Upon receipt of said information Civil Surgeon, Fatehabad

constituted a three member team on 12.7.2021 comprising of the following members :-

- (i) Dr. Hanuman Singh, Deputy Civil Surgeon, Fatehabad;
- (ii) Dr. Girish Kumar, Additional Senior Medical Officer, General Hospital, Fatehabad; and
- (iii) Dr. Kamal Beniwal, Medical Officer, General Hospital, Fatehabad.

3. The said persons were authorized to do the needful and also to get the requisite FIR lodged. The team so appointed collected information to the effect that Jagraj Singh, resident of Sangrur with the help of Jaswinder Kaur, resident of Tohana, District Fatehabad used to get sex determination tests conducted in an illegal manner. A pregnant lady namely Nisha was associated as a decoy pregnant female. A deal for sex-determination test was struck for an amount of Rs.40,000/-. On the asking of secret informer, an amount of Rs.20,000/- was transferred from the account of the decoy pregnant female to the account of Jagraj through 'Google Pay' from the mobile phone of the decoy pregnant female to the mobile phone of Jagraj. The decoy pregnant female was asked to pay the balance amount of Rs.20,000/- in cash on the day of examination. One Deepak Kumar, Pharmacist at Government Hospital, Sirsa was nominated to accompany the decoy pregnant female in a car which was to take the decoy pregnant female to the place nominated by Jagraj Singh i.e. Chandigarh Road near Chaudhry Petrol Pump, Tohana on 13.7.2021 at 9:30 a.m. On the said day, the team constituted by Civil Surgeon tailed the car in which the decoy pregnant female was being taken for the test. When the car driven by Deepak Kumar reached near Chaudhry Petrol Pump at about 9:30 a.m., Deepak Kumar, on the asking of the secret informant, took the car towards Railway Road,

Tohana where two persons came on a motorcycle. One of them whose name was Jagraj sat in the car. Deepak as well as the decoy pregnant female were made to sit on the rear seat. Another lady namely Jaswinder Kaur also came and sat in the car. On the asking of Jaswinder Kaur, the decoy pregnant female handed over an amount of Rs.20,000/- in cash which had been given to her by the team. Jagraj drove the car to Barwala (Hisar). One of the team members namely Dr. Girish Kumar intimated Dr. Ratna Bharti, Civil Surgeon, Hisar through Dr. Viresh Bhushan, Civil Surgeon, Fatehabad that their team as well as the decoy pregnant female were proceeding towards Barwala (Hisar) and asked them to keep their PNDT team ready so that they may also reach the place of occurrence immediately. Consequently, a team comprising of the following doctors/ officials of Hisar was constituted:-

- (i) Dr. Prabhu Dayal, Nodal Officer, PNDT, Hisar;
- (ii) Dr. Kamind Monga, ASMO-CHC, Hansi; and
- (iii) Dr. Tarun Bhutani, Dental Surgeon, UHC, Sector 14, Hisar.

4. The team, so constituted, was to wait for the signal from the Fatehabad team. The Alto car in which the decoy pregnant female was travelling reached Bus Stand, Barwala where Jaswinder Kaur and Jagraj asked Deepak to alight from the car. Another lady sat in the car. Jagraj took the car to JD Jindal Hospital situated at Hisar road. Jaswinder Kaur took alongwith her the decoy pregnant female as well as the other lady to the house situated in the colony behind JD Jindal Hospital. They were taken to first floor where a person, having a machine looking like a laptop, was waiting in the room. The second lady who had accompanied them from Bus Stand, Barwala was asked by Jaswinder Kaur to lie down on a bench. She was examined by a

person sitting in the room and was informed that she was carrying a male fetus. Thereafter, the decoy pregnant female was asked to lie down on a bench. The person present there conducted ultrasound examination of her abdomen and disclosed that she was carrying a fetus of five and a half months and the same was upside down and that the same was a male fetus. When they came out of the room, Jaswinder Kaur disclosed the name of the person who had conducted the test as Dr. Anant Ram. Jaswinder Kaur brought both the females back to Barwala (Hisar) on foot where Jagraj was waiting. He drove all three of them namely Jaswinder Kaur, decoy pregnant female and the other lady towards Bus Stand, Barwala. When the car stopped at the Bus Stand, the decoy pregnant female signalled to the raiding team and the team members apprehended Jagraj and Jaswinder Kaur with the help of a police team. Dr. Girish Kumar requested the Hisar team to reach Barwala immediately. The team took Jagraj and Jaswinder Kaur to the place where sex determination test had been conducted and a raid was conducted. Dr. Anant Ram as well as the owner of the house namely Smt. Sunita had already fled from the place. Upon search of Jaswinder Kaur, 80 currency notes of the denomination of Rs.500/- were recovered out of which 40 currency notes were the ones passed on by decoy pregnant female whose serial numbers had been noted down previously by the raiding team of Fatehabad. The remaining 40 currency notes were stated to have been given to Jaswinder Kaur by the second pregnant lady namely Smt. Manisha. At that time, the Hisar team also reached the place of occurrence. Jaswinder Kaur, upon being quizzed, stated that she had taken both the ladies alongwith Jagraj to Dr. Anant Ram in the house of Sunita for the purpose of

getting the sex determination test conducted. Jagraj, in his statement, also admitted that the deal had been struck for Rs.40,000/- out of which he had received Rs.20,000/- in his account through 'Google Pay'. A DVR in respect of CCTV cameras installed in the premises, was taken into possession. An ultrasound machine - make 'SURBI' alongwith a probe, a Dell laptop charger, a SURBI ultrasound machine charger, attachment cable etc. were also recovered from the spot. Statement of one Hawa Singh of locality was recorded, who stated that the house in question belongs to Sunita.

5. Shri Abhishek Sethi, the learned counsel representing the petitioner, has made the following submissions while assailing the FIR and consequential proceedings:

- (i) that since the deal is alleged to have been struck for Rs.40,000/- out of which Jagraj Singh received an amount of Rs.20,000/- through 'Google-Pay' from decoy customer, which was recovered from him, and the balance amount of Rs.20,000 was recovered from Jaswinder Kaur on 14.7.2021 after the alleged sex-determination test had taken place, therefore it is apparent that Dr. Anant Ram has not benefitted in any manner out of the total amount of Rs.40,000/-, which would totally rule out his involvement;
- (ii) that the petitioner was neither arrested at the spot nor was the test conducted at his clinic nor the recovered machine can be said to belong to him so as to connect him with the occurrence;
- (iii) that since the alleged act of illegal sex determination had taken place in Hissar, therefore the team appointed by Civil Surgeon Fatehabad would have no territorial jurisdiction in respect of the alleged commission of offence at Hisar and as such the entire proceedings having been conducted by Fatehabad team without jurisdiction stand vitiated;

- (iv) that the complainant had no authority whatsoever to get the FIR lodged and that it is only the Appropriate Authority which has been vested with powers to take action against offenders;
- (v) that as per section 17(4)(e) of the Act, it is solely the Appropriate Authority, which is authorised to carry out investigation with respect to breach of provisions of the Act and Rules framed thereunder and that police has no role therein particularly when the Authority has been vested with ample powers in this regard by virtue of section 17A, 20 and 30 of the Act and since in the present case, a major part of investigation had been conducted by police officials only, the same is against the intent and spirit of the Act and is thus void *ab-initio* and stands vitiated;
- (vi) that as per Section 28, the Court can take cognizance only on a complaint made by Appropriate Authority and not on the basis of Report u/s 173 Cr.P.C;
- (vii) that as per Rule 18A(3)(iv) of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996, framed in exercise of the powers conferred by section 32 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, the Appropriate Authority is not supposed to associate police for investigating case under PNDT Act.

6. On the other hand, the learned State counsel, while opposing the petition, has submitted that the FIR does not suffer from any infirmity having been lodged by an officer duly competent to lodge the same. It has further been submitted that it is a case where pursuant to receipt of prior information regarding illegal sex determination tests being conducted, raiding parties had been duly constituted by Civil Surgeon, Fatehabad and also by Civil Surgeon, Hisar and some of the accused were caught at the spot and the presence of some of them including that of petitioner Dr. Anant Ram is reflected in the CCTV footage. It has been submitted that the recovery of equipment used for conducting ultrasound test from the spot also establishes the allegations against the accused.

7. The learned State counsel has further submitted that it is only a bar for taking cognizance by Court, which is envisaged in Section 28 of the PNDDT Act and that the same can not be extended to lodging of FIR or investigation. The learned State counsel has placed reliance upon a judgment dated 4.12.2014 rendered by a Division Bench of this Court in Criminal Misc. No. M-4211 of 2021 – Hardeep Singh and another Versus State of Haryana and another, and has prayed for dismissal of the petition.
8. The rival submissions addressed before this Court are being discussed individually hereinunder:
9. Submission No. (i)
- (i) *that since the deal is alleged to have been struck for Rs.40,000/- out of which Jagraj Singh received an amount of Rs.20,000/- through 'Google-Pay' from decoy customer, which was recovered from him, and the balance amount of Rs.20,000 was recovered from Jaswinder Kaur on 14.7.2021 after the alleged sex-determination test had taken place, therefore it is apparent that Dr. Anant Ram has not benefitted in any manner out of the total amount of Rs.40,000/-, which would totally rule out his involvement;*

The learned counsel vehemently argued that since no amount out of the settled amount of Rs.40,000/- was admittedly ever paid to Dr. Anant Ram or was ever recovered from him, therefore, his involvement in the alleged sex determination test is absolutely ruled out. This Court does find that while the initial payment of Rs.20,000/-, had been made to Jagraj Singh by the decoy pregnant female through 'Google Pay' and the balance amount of Rs.20,000/- had been paid by the decoy pregnant female to Jaswinder Kaur, which was duly recovered from her but the prosecution version as unfolded in the FIR itself clearly shows that on the day when the decoy pregnant female was being taken by Jaswinder Kaur and Jagraj Singh to Barwala for

the test, they picked up another lady on the way in the car and her test was also conducted by the petitioner alongwith the test conducted upon the decoy pregnant female. Since no amount in respect of the test conducted on the second lady was recovered from Jagraj Singh or Jaswinder Kaur, it appears that either the amount paid by the second lady must have been retained in entirety by the petitioner Dr. Anant Ram or there might have been some other adjustments amongst petitioner Dr. Anant Ram and co-accused. There is sufficient evidence indicating the complicity of Dr. Anant Ram, who is not only seen in the CCTV footage but some equipment used for illegal sex determination test was also recovered from the spot. Further, Jaswinder Kaur and Jagraj Singh upon their arrest had also made disclosure statements about the tests having been conducted by the petitioner. The above raised contention on behalf of the petitioner, as such, does not carry any weight and cannot be accepted.

10. Submission No. (ii)

(ii) that the petitioner was neither arrested at the spot nor was the test conducted at his clinic nor the recovered machine can be said to belong to him so as to connect him with the occurrence;

It is no doubt correct that the petitioner was not arrested at the spot. However, his presence is duly reflected in CCTV footage collected from the cameras/DVR installed near the place of occurrence. The co-accused Jaswinder Kaur and Jagraj Singh in their disclosure statements have also nominated the petitioner as the person who had conducted the illegal sex determination test. A portable ultrasound machine, make 'SURBI' alongwith probe, a Dell laptop charger and other equipment were recovered from the spot. It will not be out of place to mention that the ultrasound equipment

which had been purchased and registered in the name of the petitioner, already stands seized by the police in connection with other cases registered against him. The recovered equipment is in the nature of a portable ultrasound machine, which apparently had been acquired by the petitioner without getting the same registered in his own name. The evidence collected by the police is sufficient to establish the involvement of the petitioner. The contention, as such, stands negated

11. Submission No. (iii)

(iii) that since the alleged act of illegal sex determination had taken place in Hissar, therefore the team appointed by Civil Surgeon Fatehabad would have no territorial jurisdiction in respect of the alleged commission of offence at Hisar and as such the entire proceedings having been conducted by Fatehabad team without jurisdiction stand vitiated;

The learned counsel has raised issues regarding territorial jurisdiction of the team appointed by Civil Surgeon, Fatehabad, particularly as regards the initial proceedings conducted in the present case i.e. nominating the decoy pregnant female, handing over the currency notes, whose serial numbers had been noted down etc. However, in the present case, the facts are such where it can be said that the occurrence had partly taken place in Fatehabad where the accused conspired for committing the offences inasmuch as a deal was struck for getting the illegal sex determination test conducted and pursuant thereto an amount of Rs. 20,000/- was transferred to accused Jagraj Singh through 'Google Pay'. It was from Fatehabad that the accused Jagraj Singh and Jaswinder Kaur proceeded alongwith decoy pregnant female towards Barwala (Hisar), in pursuance of their conspiracy. When the team constituted by Civil Surgeon, Fatehabad, which was tailing the car in which the decoy pregnant female was being taken by co-accused, realised that the

car was proceeding towards District Hisar, Dr. Girish Kumar, a member of the team constituted by Civil Surgeon, Fatehabad immediately intimated Dr. Ratna Bharti, Civil Surgeon, Hisar through Dr. Viresh Bhushan, Civil Surgeon, Fatehabad requesting them to send their team as well and consequently the team constituted by Civil Surgeon, Hisar did actually join the proceedings though after the test had been conducted. In these circumstances, the association of the team constituted by Civil Surgeon, Fatehabad cannot be said to be not having any jurisdiction, particularly when the commission of the offences can be said to have commenced from Fatehabad where a conspiracy was hatched, though, the offences culminated in Hisar where test was performed. As such, the part of the proceedings conducted by the team constituted by Civil Surgeon, Fatehabad in respect of the FIR registered at Hisar cannot be called to question on grounds of territorial jurisdiction.

12. Submission No. (iv):

(iv) that the complainant had no authority whatsoever to get the FIR lodged and that it is only the Appropriate Authority which has been vested with powers to take action against offenders;

In the present case, the FIR in question has been lodged at the instance of Dr. Prabhu Dayal, Nodal Officer, PNDT, Civil Hospital, Hisar. The contention of the petitioner that it is only the Appropriate Authority, Hisar which is competent to lodge FIR cannot be accepted inasmuch as the police, in terms of Section 154 Cr.P.C., upon receiving information pertaining to commission of a cognizable offence is bound to reduce the same in writing which is called a First Information Report. The bar as envisaged in Section 28 of the PNDT Act is a bar against taking cognizance by the Court wherein

it is provided that it is only upon a complaint made by Appropriate Authority that a Court may take cognizance of an offence. The said bar cannot be extended to the proceedings pertaining to lodging of FIR, as any person can give information pertaining to commission of a cognizable offence to police. In the present case, the FIR having been lodged at the instance of Dr. Prabhu Dayal, Nodal Officer, PNDT, Civil Hospital, Hisar, who was incharge of the team constituted by Civil Surgeon, Hisar, vide order dated 13.7.2021 (Annexure R-1) can not be said to have been lodged by a person not competent to do so. The aforesaid submission is found to be sans merit and does not merit acceptance.

13. Submission No. (v)

- (v) *that as per section 17(4)(e) of the Act, it is solely the Appropriate Authority, which is authorised to carry out investigation with respect to breach of provisions of the Act and Rules framed thereunder and that police has no role therein particularly when the Authority has been vested with ample powers in this regard by virtue of section 17A, 20 and 30 of the Act and since in the present case, a major part of investigation had been conducted by police officials only, the same is against the intent and spirit of the Act and is thus void ab-initio and stands vitiated;*

The learned counsel in order to hammer forth his aforesaid submission has placed reliance upon a judgment of Hon'ble Supreme Court rendered in 1962 AIR (SC) 63 - Delhi Administration versus Ram Singh and contended that the said judgment was delivered while interpreting provisions of Suppression of Immoral Traffic in Women and Girls Act, 1956, which has provisions in Sections 13 and 14 parimateria with provisions of Sections 17, 17A and 30 of the PNDT Act. He has submitted that Hon'ble Supreme Court held that it is only the 'special police officer' who is competent to investigate the case and no other police officer. It has been submitted that

since even in the PNDDT Act, the Appropriate Authority has been vested with all the powers, as could be exercised by a police officer including power to initiate investigation, and association of police is not visualized, therefore, the investigation conducted in the present case wherein police has also been associated, is null and void and the entire proceedings including lodging of FIR deserve to be set aside.

14. In order to appreciate the contentions raised above, particularly on the strength of Delhi Administration's case (Supra), it will be appropriate to juxtapose the relevant provisions of both the Acts, since it is from the language of the Act that the intention of the legislature can be gathered. In fact, while comparing the two Acts i.e. Suppression of Immoral Traffic in Women and Girls Act, 1956 and PNDDT Act, this Court deems appropriate to refer to provisions of another Act also i.e. PMLA Act so as to highlight that it is the language used in the Act which holds the key as regards the procedure to be adopted. The relevant provisions of the aforesaid three Acts are reproduced hereinunder :-

| Sections 13 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 | Sections 48 of the PMLA Act | Sections 17(3) of the PNDDT Act |
|---|---|--|
| <p>13. (1) <u>There shall be for each area to be specified by the State Government in this behalf, a special police officer</u> appointed by or on behalf of that Government for dealing with offences under this Act in that area.</p> <p>(2) The special police officer shall not be below the rank of-</p> <p>(a) <u>an Assistant Commissioner of Police</u> in the presidency towns of Madras and Calcutta;</p> <p>(b) <u>a Superintendent of Police</u> in the presidency town of Bombay; and</p> <p>(c) <u>a Deputy Superintendent of</u></p> | <p>48. Authorities under the Act. - There shall be the following classes of authorities for the purposes of this Act, namely:</p> <p>(a) Director or Additional Director or Joint Director,</p> <p>(b) Deputy Director,</p> <p>(c) Assistant Director, and</p> <p>(d) such other class of officers as may be appointed for the purposes of this Act</p> | <p>17. Appropriate Authority and Advisory Committee -</p> <p>(1) x x x</p> <p>(2) x x x</p> <p>(3) The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,—</p> <p>(a) when appointed for the whole of the State or the Union territory, consisting of the following three members:—</p> |

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| <p>Police else where.</p> <p>(3) For the efficient discharge of his functions in relation to offences under this Act-</p> <p>(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and</p> <p>(b) x x x</p> | | <p>(i) an officer of or above the rank of the Joint Director of Health and Family Welfare—Chairperson;</p> <p>(ii) an eminent woman representing women's organisation; and</p> <p>(iii) an officer of Law Department of the State or the Union territory concerned:</p> <p>Provided that</p> |
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| Sections 14 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 | Sections 19 and 45 of the PMLA Act | Sections 17(4) and 30 of the PNDT Act |
|---|--|---|
| <p>14. Notwithstanding anything contained in the Code of Criminal Procedure' 1898 (5 of 1898) any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code:</p> <p>Provided that, notwithstanding anything contained in that Code,-</p> <p>(i) arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval;</p> <p>(ii) x x x</p> <p>(iii) x x x</p> | <p>19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.</p> <p>(2) x x x</p> <p>(3) x x x</p> <p>45. Offences to be cognizable and non-bailable.—</p> <p>(1) xxxx xxxx xxxx</p> <p>(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.</p> <p>(2) xxxx xxxx xxxx</p> | <p>17. Appropriate Authority and Advisory Committee--</p> <p>(1) xxx</p> <p>(2) xxx</p> <p>(3) xxx</p> <p>(4) The Appropriate Authority shall have the following functions, namely:-</p> <p>(a)</p> <p>(b)</p> <p>(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action; and</p> <p>(d) xxx</p> <p>(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, <i>suo motu</i> or brought to its notice and also to initiate independent investigations in such matter;</p> <p>30. Power to search and seize records, etc. -</p> <p>1. If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place, such Authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times</p> |

15. A perusal of the aforesaid provisions pertaining to investigation of offences under the three Special Acts would show the following marked distinctions in the Acts :-

(i) Under Section 45(1A) of the PMLA Act, it has been, in clear and in unambiguous terms, specified by a *non-obstante* clause that no police officer shall investigate into an offence under the Act unless specifically authorized by Central Government. In other words some kind of exclusivity in the matter of investigation has been conferred on the officials of Enforcement Directorate, designated as Directors, Deputy Directors, Assistant Directors, who have also been conferred with power to arrest.

(ii) As per provisions of Section 13 and 14 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, it is a certain category of police officers, nominated as 'special police officers', who have been duly made competent to conduct investigation. Still further, under proviso to section 14(i) of the said 1956 Act, it is specifically provided that arrest without warrant can only be made by a 'Special Police Officer'. The said proviso reads as under:

“14. Notwithstanding anything contained in the Code of Criminal Procedure' 1898 (5 of 1898) any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code:

Provided that, notwithstanding anything contained in that Code,-

- (i) **arrest without warrant** may be made **only by the special police officer** or under his direction or guidance, or subject to his prior approval;

Hon'ble Supreme Court, in 1962 AIR SC 63, Delhi Administration vs. Ram Singh, while interpreting the provisions of the Suppression of Immoral Traffic in Women and Girls Act, 1956, held as follows:

“24. We are therefore of opinion that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognizable offences. The result is that this appeal by the Delhi Administration fails and is hereby dismissed.”

(emphasis provided)

Thus, from the scheme of the Act, it is evident that there is some kind of exclusivity in the matter of arrest and investigation and and it is only the 'special police officers' who have been made competent to arrest and investigate ruling out involvement of police officers who are not nominated as 'special police officers'.

- (iii) Now, in order to determine as to whether there is any such kind of exclusivity in the matter of investigation under the PNDT Act, the provisions of the Act and also the rules framed thereunder need to be examined. A perusal of Sections 17 and and 30 of the PNDT Act does show that Appropriate Authority has been conferred with various powers in the matter of investigation. Though it is nowhere specifically stated therein as to whether the same would also include power of arrest but the word “investigation” as defined in section 2(h) of Cr.P.C. has been interpreted to be wide enough so as to include arrest as well. Hon'ble Supreme Court, in 2003(2) M.C. Abraham vs. State of Maharashtra held as under:

“In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The Section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned.”

However, there is no such provision in the PNDT Act to absolutely rule out involvement of the police or to have restricted involvement, as has been noticed in the other two Acts, referred to above. The offences under the PNDT Act have been classified as 'cognizable' offences without there being any exclusion clause ruling out police investigation as is there under provisions of section 45(1A) of PMLA and without there being any kind of rider defining a particular class of police officers only to be competent as is noticed in proviso to Section 14(i) of Suppression of Immoral Traffic in Women and Girls Act, 1956. Thus, in the absence of any exclusion clause or imposition of any limitation as regards the class of officers who have been made competent, the local police can not be said to be not competent to investigate cognizable offences under PNDT Act. Still further, Rule 18(A) of the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 tends to point out that involvement of the police is not absolutely ruled out though,

police normally is not expected to be associated. Rule 18-A (3) of the said Rules reads as follows :-

- (3) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter alia, shall observe the following conduct for processing of complaint and investigation, namely:-
- (i) maintain appropriate diaries in support of registration of each of the complaint or case under the Act;
 - (ii) attend to all complaints and maintain transparency in the follow-up action of the complaints;
 - (iii) investigate all the complaints within twenty four hours of receipt of the complaint and complete the investigation within fortyeight hours of receipt of such complaint;
 - (iv) as far as possible, not involve police for investigating cases under the Act as the case under the Act are tried as complaint case under the Code of Criminal Procedure, 1973 (2 of 1974)."
(emphasis supplied)

The words '*as far as possible*' as existing in aforesaid rule would show that association of police is not absolutely ruled out though to be avoided which can well be appreciated given the nature of offences which are committed by various medical techniques and equipment with which ordinary police may not be fully conversant.

16. From the aforesaid discussion, it is apparent that it is the language of relevant provisions of each of the Act which holds the key to intention as per scheme of the Act. The offences being cognizable and there being no absolute bar against arrest or investigation by a police officer, a police officer upon getting information regarding commission of a cognizable offence under PNDT Act, can not be expected to shut his eyes to the same. It is only under section 28 of the PNDT Act that a bar is provided against taking cognizance by Courts of offences under the Act. Section 28 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 authorized 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 organization.

- (2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of this 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.”

17. A perusal of 28 of the PNDT Act would show that it envisages that no Court is to take cognizance of offence under the Act except on a complaint made by the persons enumerated in clause (a) thereof. Besides, clause (b) envisages that a complaint may also be made by 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. '*Cognizance by Court*' and '*investigation of offence*' are two different things. Investigation precedes cognizance by Court. The stage of cognizance by Court would come only upon conclusion of investigation. Taking cognizance is function of Court whereas investigation is domain of police/investigating agency. A Division Bench of this Court in its judgment dated 4.12.2014 rendered in *Criminal Misc. No. M-4211 of 2021 – Hardeep Singh and another versus State of Haryana and another,* has dealt with in detail the procedural aspects in respect of cases under

PNDT Act. The judgement was delivered while considering the following issues which had been referred to a larger Bench by a Single Bench of this Court:-

- “(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?”

18. The aforesaid Division Bench after considering the matter at length returned its findings to the following effect :-

“In the circumstances, the questions as formulated in the reference are 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.”

19. During the course of arguments, the learned counsel for the petitioner drew the attention of this Court to a judgment rendered by a Single Bench of Chhattisgarh High Court reported as 2021(1) C.G.L.J. 13 - Dr. Amritlal Rohledar Versus State of Chhattisgarh and others wherein certain reservations have been expressed as regards the Division Bench judgment rendered in Hardeep Singh's case (Supra). However, this Court does not find itself in agreement with the view taken by Single Bench of Chhattisgarh High Court.
20. Recently, a Single Bench of this Court in Criminal Misc. No. M-421 of 2021 - Dr. Aparna Singhal versus State of Haryana and another, following the aforesaid judgment in Hardeep Singh's case (Supra), while dealing with a contention raised on behalf of the accused to the effect that no FIR could be registered except on the complaint of a duly notified District Appropriate Authority comprising of three members, turned down the said contention while observing therein that the police would file a *kalandra* before District Appropriate Authority and thereafter a complaint alongwith a *kalandra* would be filed against the accused as per terms of Section 28 of the PNDT Act. In the present case, the police after conducting investigation has presented a challan in respect of the offences under IPC i.e. offence under Section 120-B of IPC against Jagraj Singh, Jaswinder Kaur and Manisha on 12.9.2021, while the same is yet to be filed against the other accused. It is the categorical stand of the State in its reply that the District Appropriate Authority under PNDT Act is filing a complaint/*kalandra* separately against the accused under provisions of Section 23, 3(1), 3(a), 4, 5(ii) and 6(b) of the PNDT Act.

21. As a sequel to the aforesaid discussion, no infirmity can be found in the procedure as regards lodging of FIR or the investigation conducted thereafter. The submissions, in this regard, made on behalf of the petitioner are shorn of merit and are unacceptable.

22. Submission No. (vi)

(vi) that as per Section 28, the Court can take cognizance only on a complaint made by Appropriate Authority and not on the basis of Report u/s 173 Cr.P.C;

There is no dispute that in terms of Section 28 of the PNDT Act, it is only upon a complaint made by Appropriate Authority that a Court can take cognizance and not on the basis of a report under Section 173 Cr.P.C., as far as offences under PNDT Act are concerned. As has been specifically stated in the reply filed by the State that a *Kalandra* is going to be filed by the Appropriate Authority in respect of offences under Sections 23, 3(1), 3(a), 4, 5(ii) and 6(b) of the PNDT Act, whereas the police has separately filed a chargesheet under 173 Cr.P.C. in respect of the offences under IPC only. As such, it cannot be said that there has been any violation of Section 28 of the PNDT Act.

23. Submission No. (vii)

(vii) that as per Rule 18A(3)(iv) of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996, framed in exercise of the powers conferred by section 32 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, the Appropriate Authority is not supposed to associate police for investigating case under PNDT Act.

As already noticed above, while discussing submission no.(v), there is no absolute bar under PNDT Act against the police investigating a case, as evident from Rule 18-A(3)(iv) of the Pre-conception and Pre-Natal

Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. The said Rule reads as follows :-

(3) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter alia, shall observe the following conduct for processing of complaint and investigation, namely:-

- (i) maintain appropriate diaries in support of registration of each of the complaint or case under the Act;
- (ii) attend to all complaints and maintain transparency in the follow-up action of the complaints;
- (iii) investigate all the complaints within twenty four hours of receipt of the complaint and complete the investigation within fortyeight hours of receipt of such complaint;
- (iv) ***as far as possible***, not involve police for investigating cases under the Act as the case under the Act are tried as complaint case under the Code of Criminal Procedure, 1973 (2 of 1974).”

24. No doubt, the aforesaid rule does suggest that ordinarily the police officers should not be associated for the purpose of investigating a case but the words '*as far as possible*', as occurring in Rule 18-A(3)(iv) cannot be interpreted to mean an absolute bar against involvement of the police. Rather, it does show that there would be cases where police could be associated. However, it goes without saying that keeping in view the fact that offences under PNDT Act are committed using specialised equipment requiring technical knowledge, with which ordinary police would not be very familiar, even if commission of an offence under PNDT Act comes to

notice of police, the officials of Department of Health and Family Welfare should be informed immediately. As such, Rule 18A(3)(iv) cannot be made a ground for quashing of the FIR, particularly when no such absolute bar is provided in the PNDDT Act, unlike the provisions of PMLA Act wherein a specific bar is envisaged in provisions of Section 45(1A) of the PMLA Act. The aforesaid submission being sans merit cannot be accepted.

25. No other point has been canvassed before this Court. As an upshot of discussion made above, this Court does not find any ground for quashing of the FIR or for setting aside the proceedings conducted pursuant to lodging of the FIR.
26. There is no merit in this petition and the same is hereby dismissed.

02.04.2022

kamal

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No

(Gurvinder Singh Gill)
Judge

सत्यमेव जयते

