

Before Jasjit Singh Bedi, J.

ILA SOOD—Petitioner

versus

STATE OF PUNJAB—Respondents

CRM-M No.14160 of 2016

April 18, 2022

Code of Criminal Procedure, 1973—Ss. 482 and 210—Pre-Natal Diagnostic Techniques (PNDT) Act, 1994—Ss. 27 and 28—Maintainability of FIR under the provisions of PNDT Act, 1994—Held, FIR is maintainable for offence committed under the Act, but for the purpose of taking cognizance, report under Section 173 Cr.P.C. should be accompanied with complaint of appropriate authority that has been filed in accordance with Section 28 of Act—Further held, in case of complaint case and Police investigation in respect of same offence, Magistrate concerned shall enquire into or try both together as if both cases have been instituted on Police Report—Petition Dismissed.

Held that, the provisions of Section 28 of the Act envisaged that no Court is to take cognizance of an 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 15 days in the manner prescribed to the Appropriate Authority of the alleged offence and has an intention to make a complaint to the Court.

(Para 11)

Further held that, a perusal of the aforementioned provision would reveal that where there is a complaint case and a police investigation in respect of the same offence then the Magistrate concerned shall inquire into or try together the complaint case and the case arising out of a police report as if both the cases have instituted on a Police report. Therefore, the alternative argument of the learned counsel for the petitioner that on clubbing of both cases, the trial should proceed like in a complaint case cannot be accepted.

(Para 15)

Anurag Jain, Advocate, *for the petitioner.*

Sidakmeet Singh Sandhu, DAG, Punjab.

JASJIT SINGH BEDI, J.

(1) The present petition has been filed under Section 482 Cr.P.C. for quashing of case FIR No.05 dated 03.01.2016 registered under Sections 3-A, 5, 6 and 23 of PNDT Act, 1994 and Rule 9(4) & 9 (1) of PC PNDT Rules, 1996 and Sections 120-B IPC at Police Station City Khanna, District Ludhiana (Annexure P-1).

(2) The brief facts of the case are that the petitioner was running a hospital in the name and style of Jeevan Eye & Maternity Hospital at City Khanna, District Ludhiana along with Dr. Jagjivan Sood. The hospital was registered under the PC & PNDT Act, 1994 and the registration was being renewed periodically from time to time.

(3) The District Appropriate Authority, Ambala-cum-Civil Surgeon received a secret information from some source that sex determination of pregnant ladies was being done by one Smt. Meenakshi (Asha Worker) in connivance with other touts of District Patiala by charging a sum of Rs.25,000/-. The DDA, Ambala asked one Dharamveer Sharma who was working as an Adolescent Health Worker at CHC, Chaurmastpur (Ambala) to contact Smt. Meenakshi for getting the sex of a foetus determined.

(4) The prosecution case thereafter is that Smt. Meenakshi agreed and asked the said Dharamveer Sharma to come along with the pregnant lady on 03.01.2016. Smt. Sonia who was allegedly six month's pregnant and was working against the post of a Ward Servant in Government Hospital, Ambala City was persuaded to be the decoy customer. The case thereafter is that on the same day i.e. 03.01.2016, the aforementioned persons along with certain others reached the petitioner's Hospital, where it is alleged that the petitioner subjected the decoy customer to ultrasonography of sex determination without entering her name in the PC & PNDT Register and without filling the F-form. It is further alleged that the petitioner disclosed the sex of the foetus to Smt. Meenakshi who further conveyed the same to Dharamveer Sharma in the presence of the decoy customer. Subsequently, certain sums of money were recovered from Smt. Meenakshi and Kawaljeet Singh. The petitioner was arrested and her ultrasound machine was seized. The present FIR was registered on the same day and is attached with the petition as Annexure P-1. Ultimately, the petitioner was granted the concession of regular bail.

(5) The petitioner has raised a number of disputed questions of fact regarding the search and seizure and how she had actually not

conducted the ultrasound on the decoy customer.

(6) While referring to various provisions of the PC & PNDT Act, 1994 the primary contention of the petitioner is that in terms of Section 28 of the PC & PNDT Act, no Court could take cognizance of an offence under this Act except on a complaint made by the Appropriate Authority concerned. It was contended that the said complaint had already been filed and therefore, the present FIR was not maintainable. It was argued that under the provisions of PC & PNDT Act, 1994 offences were to be investigated/inquired into by the Appropriate Authority concerned as per the mandate of Section 28 of PC & PNDT Act. A reference was made to Sections 17, 17-A and 30 read with Rules 11, 12, 18, 18-A of the PC & PNDT Rules, 1996 to contend that an offence under this Act was to be investigated into by the District Appropriate Authority as the PC & PNDT Act, 1994 was a Code in itself. References were also made to various judgments of this Court, wherein, it was held that an FIR under the provisions of the PC & PNDT Act, 1994 was not maintainable.

(7) The learned State counsel has filed a reply to the petition. The response of the State was to the effect that the registration of an FIR was maintainable and in the present case after conclusion of investigation, the challan had been prepared and was likely to be submitted to the trial Court. It may be relevant to mention here that pursuant to the filing of the written statement in November, 2016, the challan was submitted before the trial Court and the matter was posted for framing of charges when an interim order dated 06.12.2017 interdicted proceedings pursuant to the filing of the challan.

(8) I have heard the learned counsel for the parties at considerable length.

(9) As has been noticed hereinabove, the primary contention of the petitioner is that an FIR was not maintainable as the Court could take cognizance under the Act only on a complaint of the Appropriate Authority. During the course of arguments however, another alternative plea was raised that if the State case (FIR case) and the complaint case was to be clubbed, then the trial should proceed following the procedure of a complaint case.

(10) Before proceeding in the matter, it would be relevant to examine the relevant provisions of the Act.

Section 27 of the PC & PNDT Act, reads as under:-

“27. Offence to be cognizable, non-bailable and non-compoundable.-

Every offence under this Act shall be cognizable, non-bailable and non-compoundable.”

Section 28 of the PC & PNDT Act, reads as under:-

“28. Cognizance of offences.

(1) No court shall take cognizance of an offence under this Act except on a complaint made by-

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.—For the purpose of this clause, “person” includes a social organisation.

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

3. Where a complaint has been made under clause (b) of subsection (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.”

(11) The provisions of Section 28 of the Act envisaged that no Court is to take cognizance of an 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 15 days in the manner prescribed to the Appropriate Authority of the alleged offence and has an intention to make a complaint to the Court.

(12) That there were conflicting judgments of this Court as to the apparent dichotomy between Sections 27 and 28 of the PC & PNDT Act, 1994 inasmuch as, Section 27 PC & PNDT Act envisaged the offence to be cognizable i.e. that the registration of the FIR was

permissible, whereas, the Section 28 gives an impression that the mode of taking cognizance was only on the basis of a complaint by an Appropriate Authority. Ultimately, the matter came up on a reference to a Division Bench of this Court in the case of '*Hardeep Singh & Another versus State of Haryana & others*' in CRM-M-4211-2014 decided on 04.12.2014, in which the following questions were framed.

“The learned Single Judge considered the matter and was of the view that two sections of the Act i.e. one saying that the offences under the Act are cognizable and the other saying that cognizance of the offence could be taken on a complaint made by the Appropriate Authority would require determination by a Larger Bench on the following legal points:-

(2) 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?

(3) Whether the report under Section 173 CrPC along with the complaint of an Appropriate Authority can be filed to the Court?

(4) 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 Courtlies?”

{Emphasis supplied}

After a detailed analysis, the Division Bench answered the reference as under:-

“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.”

{Emphasis supplied}

(13) A perusal of the aforementioned judgment would establish that an FIR is certainly maintainable but for the purposes of taking of cognizance, the report under Section 173 Cr.P.C. should be accompanied with the complaint of an Appropriate Authority. It is the trial Court that shall decide as to whether cognizance is to be taken in a particular case on the basis of the Police report accompanied with the appropriate complaint.

(14) In the present case undoubtedly, the petitioners have also been summoned in a private complaint preferred by the Appropriate Authority and in fact a quashing petition bearing CRM-M-2608-2016 is pending adjudication before this Court. Thus, in the present situation where an accused has been summoned in a criminal complaint and is also facing proceedings initiated on the basis of an FIR, resort can be had to the provisions of Section 210 Cr.P.C. The said provision is reproduced hereinbelow:-

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

a. When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

b. If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the

case arising out of the police report as if both the cases were instituted on a police report.

c. If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

(15) A perusal of the aforementioned provision would reveal that where there is a complaint case and a police investigation in respect of the same offence then the Magistrate concerned shall inquire into or try together the complaint case and the case arising out of a police report as if both the cases have instituted on a Police report. Therefore, the alternative argument of the learned counsel for the petitioner that on clubbing of both cases, the trial should proceed like in a complaint case cannot be accepted.

(16) In view of the aforementioned discussion, an FIR is clearly maintainable under the provisions of the PC & PNDT Act, 1994 and even otherwise, the petitioner has the remedy of seeking clubbing of both the cases in terms of Section 210 Cr.P.C, in which case the trial shall proceed like in a State case.

(17) Thus, the present petition for quashing of the FIR No.05 dated 03.01.2016 registered under Sections 3-A, 5, 6 and 23 of PNDT Act, 1994 and Rule 9(4) & 9(1) of PC PNDT Rules, 1996 and Sections 120-B IPC at Police Station City Khanna, District Ludhiana (Annexure P-1) and all subsequent proceedings arising therefrom is hereby dismissed.

Dr. Sumati Jund