

R

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 21ST DAY OF FEBRUARY 2022

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NC 101392/2019

BETWEEN:

1. DHONDIBA ANNA JADHAV
MEMORIAL HOSPITAL,
BY DR.NITIN JADHAV
AGE: 50 YEARS,
OCC: MEDICAL PRACTITIONER,
FALLS ROAD, GOKAK,
TQ: GOKAK, DIST: BELAGAVI.
2. DR.MRS PADMA NITIN JADHAV
AGE: 48 YEARS,
OCC: MEDICAL PRACTITIONER,
FALLS ROAD, GOKAK,
TQ: GOKAK, DIST: BELAGAVI.

...PETITIONERS.

(BY SHRI SHIVAPRASAD SHANTANAGOUDAR, ADVOCATE.)

AND:

THE STATE OF KARNATAKA
BY SPP,
REP. BY TALUKA HEALTH OFFICER, GOKAK
REP. BY RAMAPPA SIDDAPPA
BENCHINAMARADI,
AGE: 59 YEARS,
R/O: GOKAK, DIST: BELAGAVI.

...RESPONDENT.

(BY SHRI RAMESH CHIGARI, HCGP.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO QUASH THE PROCEEDINGS PENDING ON THE FILE OF THE PRL. CIVIL JUDGE & JMFC COURT, GOKAK, IN C.C.NO.910/2016 REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTION 23 OF PRENATAL DIAGNOSTICS TECHNIQUES (REGULATION & PREVENTION OF MISUSE) ACT, 1994 READ WITH RULES 9(3) & (4) OF RULES 1996, SO FAR IT RELATES TO THE PETITIONERS ARE CONCERNED, ETC.,.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

The petitioners call in question proceedings instituted in C.C.No.910/2016 under Section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 r/w Rules of 1996 ('Act' for short) pending before the Principal Civil Judge and JMFC, Gokak invoking Section 200 of the Cr.P.C.

2. Heard learned counsel appearing for the petitioners and learned HCGP appearing for the respondent.

3. *Sans* details, facts in brief germane for a resolution of the dispute in the *lis* are as follows:

Petitioners are medical practitioners. They own and run Sri Dhondida Anna Jadhav Memorial Hospital at Gokak for many

years now. The respondent - Taluka Health Officer visits the hospital and conducts an inspection, the result of which is the registration of the impugned complaint invoking Section 28 of the Act on the allegation that the hospital has not maintained records as required under the Act and have also installed equipments for the purpose of detecting sex of fetus.

4. On this inspection it is further contended in the complaint that equipments and documents were seized from the hospital. After the registration of the said complaint, the jurisdictional Magistrate records the sworn statement and takes cognizance of the offences punishable under Section 28 of the Act and Rule 9 of the Rules. It is this action of the learned Magistrate that drives the petitioners to this Court.

5. The learned counsel appearing for the petitioner would vehemently argue and contend that the respondent is not the authority empowered under the Act either to inspect or register a complaint against the petitioners. Therefore, any act of the respondent in registration of the complaint is one without jurisdiction and a nullity in law.

6. On the other hand, the learned High Court Government Pleader would seek to defend the action by contending that there is a notification issued by the Government on 15.10.2011 empowering the respondent to inspect and register the complaint. He would submit that the petitioners have to come out clean in the trial as the registration of the complaint is in accordance with law.

7. I have given my anxious consideration to the submissions made by the respective learned counsel for the parties and perused the material on record. In furtherance whereof, the only issue that falls for my consider is, ***"whether the proceedings instituted by the respondent suffers from want of jurisdiction?"***

8. The afore-quoted facts are not in dispute. The Act was brought into force to check female foeticide. Section 17 of the Act reads as follows:

"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 organization; 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 within three months of that 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;

(d) to seek and consider the advice 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.

5. The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

6. The Advisory Committee shall consist of—

(a) three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists;

(b) one legal expert;

(c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be;

(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

7. No person who has been associated with the use or promotion of pre-natal

diagnostic techniques for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.

8. The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon:

Provided that the period intervening between any two meetings shall not exceed the prescribed period.

9. The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed.

17A. Powers of Appropriate Authorities:- The Appropriate Authority shall have the powers in respect of the following matters, namely:-

a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;

b) production of any document or material object relating to clause (a);

c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and

d) any other matter which may be prescribed."

9. Chapter V of the Act deals with 'Appropriate Authority and Advisory Committee'. Sub-Section (1) of Section 17 empowers the Central Government to appoint an Appropriate Authority by notification in the official gazette. The Appropriate Authority can be one or more. Sub-Section (2) of Section 17 empowers the State Government to appoint an Appropriate Authority, again by a notification in the official gazette. Once the Appropriate Authorities are appointed, they may become empowered to act under the Act. Therefore, notification being issued either by the Central Government or the State Government is imperative for such determination.

10. The State Government has issued a notification under the Act appointing the Assistant Commissioner as the Appropriate Authority invoking his power under sub-Section (2) of Section 17 of the Act. Under sub-clause (b) of sub-Section (3) of Section 17, the Assistant Commissioner of the districts of Bijapur, Bagalkot, Belgaum, Chitradurga, Mandya, Bidar and

Gulbarga, is the Appropriate authority. The notification dated 15.10.2011 reads as follows:

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ : ಆಕುಕ 309 ಎಫ್‌ಪಿಆರ್ 2011 ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ವಿಕಾಸ ಸೌಧ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 15-10-2011.

ಅಧಿಸೂಚನೆ

ಕೇಂದ್ರ ಸರ್ಕಾರ ಜಾರಿಗೆ ತಂದಿರುವ, ಗರ್ಭಪೂರ್ವ ಮತ್ತು ಪ್ರಸವಪೂರ್ವ ಪತ್ತೆ ಹಚ್ಚುವ ತಂತ್ರಗಳು (ಲಿಂಗ ಆಯ್ಕೆ ನಿಷೇಧ) ಕಾಯ್ದೆ 1994 (PC & PNDT Act 1994) (ಕೇಂದ್ರ ಅದಿನಿಯಮ 57, 1994) ಮತ್ತು ನಿಯಮಗಳು 1996, ಇವುಗಳನ್ನು ರಾಜ್ಯದಲ್ಲಿ ಪರಿಣಾಮಕಾರಿಯಾಗಿ ಅನುಷ್ಠಾನಗೊಳಿಸಲು ಕಾಯ್ದೆಯ ಸೆಕ್ಷನ್ 17 (2) ರಲ್ಲಿ ನೀಡಲ್ಪಟ್ಟಿರುವ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ರಾಜ್ಯದ ಆಯಾ ಜಿಲ್ಲೆಯ “ಜಿಲ್ಲಾಧಿಕಾರಿ” (Deputy Commissioner) ಗಳನ್ನು ಜಿಲ್ಲಾ ಮಟ್ಟದ ಜಿಲ್ಲಾ “ಸಕ್ರಮ ಪ್ರಾಧಿಕಾರಿ” (Appropriate Authority) ಗಳನ್ನಾಗಿ ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ಹಾಗೂ ಮುಂದಿನ ಆದೇಶದವರೆಗೆ ನೇಮಿಸಿದೆ.

ಹಾಗೂ ಗರ್ಭಪೂರ್ವ ಮತ್ತು ಪ್ರಸವ ಪೂರ್ವ ಪತ್ತೆ ಹಚ್ಚುವ ತಂತ್ರಗಳು (ಲಿಂಗ ಆಯ್ಕೆ ನಿಷೇಧ) ಕಾಯ್ದೆ 1994ರ ಸೆಕ್ಷನ್ 17 (3)(ಬಿ) ರಲ್ಲಿ ನೀಡಲ್ಪಟ್ಟಿರುವ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ಲಿಂಗಾನುಪಾತ ಇರುವ ರಾಜ್ಯದ ಜಿಲ್ಲೆಗಳಾದ ಬಿಜಾಪುರ, ಬಾಗಲಕೋಟೆ, ದಾವಣಗೆರೆ, ಬೆಳಗಾಂ, ಚಿತ್ರದುರ್ಗ, ಮಂಡ್ಯ, ಬೀದರ್ ಮತ್ತು ಗುಲ್ಬರ್ಗ ಜಿಲ್ಲೆಗಳ “ಉಪ ವಿಭಾಗಾಧಿಕಾರಿ” (Assistant Commissioner) ಗಳನ್ನು ಅವರ ಉಪ ವಿಭಾಗಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ “ಸಕ್ರಮ ಪ್ರಾಧಿಕಾರಿ” (Appropriate Authority at sub-district level) ಗಳನ್ನಾಗಿ ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ಹಾಗೂ ಮುಂದಿನ ಆದೇಶದವರೆಗೆ ನೇಮಿಸಿದೆ.

ದಿನಾಂಕ: 2-12-1997 ರಂದು ಹೊರಡಿಸಲಾದ ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: ಆಕುಕ 119 ಎಫ್‌ಪಿಆರ್ 94 ಅನ್ನು ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ರದ್ದುಪಡಿಸಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆಜ್ಞಾನುಸಾರ ಮತ್ತು
ಅನರ ಹೆಸರಿನಲ್ಲಿ,

ಸಹಿ/-

(ಐ.ಹೇಮನಾಥ್)

ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ,
ಆರೋಗ್ಯ ಮತ್ತು ಕುಟುಂಬ ಕಲ್ಯಾಣ ಇಲಾಖೆ

ಇವರಿಗೆ:

ಸಂಕಲಕಾರರು, ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರ, ಬೆಂಗಳೂರು ಇವರಿಗೆ ವಿಶೇಷ ಗೆಜೆಟ್‌ನಲ್ಲಿ ಪ್ರಕಟಗೊಳಿಸಿ 200 ಪ್ರತಿಗಳನ್ನು ಆರೋಗ್ಯ ಮತ್ತು ಕುಟುಂಬ ಕಲ್ಯಾಣ ಇಲಾಖೆ, ಮೊದಲನೇ ಮಹಡಿ, ಪಿ.ಕಾಶ ಸೌಧ, ಬೆಂಗಳೂರು ಇಲ್ಲಿಗೆ ಕಳುಹಿಸುವಂತೆ ಕೋರಿದೆ.

11. Therefore, on a conjoint reading of the provisions of the Act and the notification, what can be unmistakably gathered is that the Assistant Commissioner is the Appropriate Authority appointed under the Act.

12. Section 28 of the Act which deals with Cognizance of offences and reads as follows:

"28. Cognizance of offences:-

1. No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the Appropriate Authority concerned, or any officer authorised in

this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

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

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

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

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

13. Section 28 mandates that no Court shall take cognizance of an offence under the Act except on a complaint made by the Appropriate Authority concerned or any officer authorized in this behalf by the Central Government or the State Government as the case would be. Therefore, registration of a complaint is required to be done only from the hands of an

Appropriate Authority. Thus, the complaint registered by the respondent –Taluka Health Officer is without doubt without jurisdiction.

14. The submission of the learned High Court Government Pleader that the Taluka Health Officer is delegated with the responsibility by the Assistant Commissioner is to be noticed only to be repelled, as the provisions of the Act are unequivocal. Appointing an Authority under the Act would be the Appropriate Authority or any officer authorized either by the Central Government or by the State Government. This is to be done in terms of the notification and the notification is issued appointing the Assistant Commissioner.

15. Therefore, the order of the learned Magistrate taking cognizance of a complaint registered under Section 28 of the Act is erroneous, as cognizance under Section 28 of the Act cannot be taken except on a complaint being registered by an Appropriate Authority.

16. The admitted facts reveal that Taluka Health Officer is not the Appropriate Authority or the authorized officer under

the Act. Therefore, the very complaint registered by the respondent is without authority of law. The action of the learned Magistrate in taking cognizance under Section 28 of the Act is sequentially rendered unsustainable. In the light of all the actions impugned being ones without jurisdiction, the petition deserves to succeed, failing which, it would result in miscarriage of justice.

17. For the aforesaid reasons, the following:

ORDER

- (i) The Criminal Petition is allowed.
- (ii) The impugned proceedings in C.C.No.910/2016 pending before the Principal Civil Judge and JMFC, Gokak stand quashed.

Sd/-
JUDGE

Mrk/-