

Dr. Radhakrishna & Anr Vs State Of Maharashtra & Ors.

Court: Supreme Court Of India

Date of Decision: March 5, 2019

Acts Referred: Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act, 1994 "â€" Section 23, 29

Hon'ble Judges: Ranjan Gogoi, CJ; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Dilip Annasaheb Taur, Nishant Ramakantrao Katneshwarkar, Anoop Kandari

Final Decision: Disposed Of

Judgement

1. We have heard the learned counsels for the parties.

2. Leave granted.

3. The challenge in this appeal is to an order of the High Court of Judicature of Bombay, bench at Aurangabad dated 9th May, 2014 refusing to quash

and set aside the criminal proceedings against the accused appellants under Sections 23 and 29 of the Pre-conception and Pre-natal Diagnostic

Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "the Act").

4. We have considered the complaint dated 5th December, 2012 (registered as SCC No.863 of 2012) filed by the respondent No.2 and have heard the

learned counsels for the parties. We have also considered the show cause notice dated 9th May, 2012 issued to the accused appellant(s) and reply

thereto.

5. The allegations/lacunae on the basis of which the criminal proceedings have been initiated vide complaint dated 5th December, 2012 are as follows:

i) Form "I" column no.11 and 9 was not as per the provisions of the PCPNDT Act.

ii) Old Aloka Sonography portable machine was kept in the store room. Said Aloka Sonography machine was not entered in the registration certificate.

iii) The time table of sinologist was not mentioned in the registration certificate.

iv) The signatures of Dr. Zalwar performing sonography has different on the declaration forms.

v) The reason for the abortion was not properly recorded in the register maintained for it.

6. Insofar as Form "II" is concerned, it is not even the case of the prosecution that Form "II" was not maintained and filled up. It is also

accepted and not denied that the Column Nos. 9 and 11 of Form A had correctly mentioned and recorded the medical procedure performed

i.e. ultrasound. The allegation is that the words A "Invasive" and A "Non-Invasive" were not printed on the form though it is accepted that the

ultrasound which is an invasive procedure and Amniocentesis; Chorionic villi aspiration; Cordocentesis and any other specified procedure which fall

under A non-invasive" category were duly printed and mentioned. The procedure undertaken in all cases was ultrasound, which was correctly

recorded. The aforesaid facts are not disputed and challenged by the respondent authorities. In reply to the show cause notice, the petitioners had

pointed out that they have taken the remedial steps to include the words A "Non-invasive" and A "Invasive". It is not the allegation of the

respondent authorities that other columns in the Form were not properly filled up or there were other defects. No other defects in the record

maintained have been pointed out. In the aforesaid admitted background, it may not be appropriate and proper to hold that the deficiency/lapse stated

should mandate criminal prosecution and trial.

7. Similarly, with regard to the allegation/lacuna Nos. (ii), (iii) and (iv), it is accepted that the old sonographic machine was not in the use. It was not in

working condition. It is also accepted that the old machine was lying in the store room. The fact that the old machine had been discarded, had been

informed and intimated to the authorities earlier on 21st July, 2009. Regarding allegation No.(iii), it is stated that there is no provision under the Act and

rules framed thereunder requiring time table of the Sonologist. Even otherwise, by letter dated 19th May, 2006 time table of the Sonologist had been

informed to the Civil Surgeon. Referring to the allegation (iv) it is highlighted that the assertion that signature of Dr. Zalwar was different from the

original signature is vague without specific reference to any particular Form etc. Dr. Zalwar has not denied his signatures. Regarding allegation/lacuna

No. (v), it is stated that they do not relate to the provisions of the Act under which the prosecution has been initiated. Further, the complaint does not

state and specify the period for which the register etc. were not maintained. The aforesaid position is not under debate and challenged by the

respondent-authorities.

8. Taking into account overall view of the matter we are of the opinion that the prosecution in the instant case is futile and abortive and, therefore,

ought not to be permitted to continue. We accordingly allow this appeal; set aside the order of the High Court; and quash and set aside the impugned

criminal proceedings against the accused appellants registered and numbered as S.C.C. No.863 of 2012, titled as A "Dr. Ramsingh Gundaji Jadhav

versus Dr. Radhakrishna Namdeo Zalwar & Anr.Ã¢â€ pending on the file of learned JMFC, Sillod, District Aurangabad. Criminal appeal is disposed of.