(2016) 06 CHH CK 0002

CHHATTISGARH HIGH COURT

Case No: CRMP No. 680 of 2015

Raj Kumari Badwani	APPELLANT
Vs	
Collector, Ex-Officio Chairman PCPNDT Act	RESPONDENT

Date of Decision: June 27, 2016

Citation: (2016) 4 CGLJ 413 : (2016) CriLJ 4995 : (2017) 1 RCRCriminal 500

Hon'ble Judges: P. Sam Koshy, J.

Bench: Single Bench

Advocate: U.K.S. Chandel, Panel Lawyer, for the Respondent; Sunil Otwani, Advocate, for the Appellant

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Sam Koshy, J. - Challenge in this petition is to the order dated 25.06.2015 passed by the First Additional Sessions Judge, Raipur in Criminal Revision No. 160/2015 whereby while rejecting the revision, the sessions Judge has affirmed the order dated 04.03.2015 passed by the Special Railway Magistrate Raipur ordering for registration of a complaint against the petitioner for violation of the provisions of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (hereinafter referred to as ''the PCPNDT Act'').

2. The facts in brief is that the Deputy Collector, Raipur, on 04.03.2015 filed a complaint before the court of Judicial Magistrate First Class, Raipur under Section 28 of the PCPNDT Act alleging that she had accompanied NINC Team who had come from Delhi for inspecting the Sonography Centers at Raipur. In the course on 22.12.2014, Bombay Diagnostic centre belonging to the petitioner was inspected and in the course of inspection, the team found the petitioners to have violated the provisions of Section 4(3)(v) of the PCPNDT Act to the extent that the records available at the centre were not in the proper format as is required under the Act

and the records also did not bear the signatures of the Doctor and further the records were also incomplete, therefore, bringing the case to be one of having committed violation of provisions of Section 4(3)(v) read with Rules 9(4) and 10(1)A of the PCPNDT Act.

3. On receipt of the said complaint, the Magistrate vide order dated 04.03.2015 ordered for registration of the complaint and have ordered for issuance of notice to the petitioner seeking her presence before the court.

4. This order of registration of the complaint was put to challenge in criminal revision before the First Additional Sessions Judge, Raipur. Before the revisional court where it was specifically contended by the petitioner regarding the competency of the Deputy Collector in filing the complaint alleging that under the PCPNDT Act, the Deputy Collector is not the authorised officer as is required under Section 28 of the Act for filing of complaint.

5. During the course of hearing before the revisional court, the petitioner had cited and relied upon the judgment of Chennai High Court in case of **Dr. (Koshy, J.) Manimegalai v. State, 2014(4) Crimes 483**, however, the revisional court after considering the submissions put forth by the petitioner, vide order impugned dated 25.06.2015 rejected the revision petition holding it to be non maintainable.

6. Learned counsel appearing for the petitioner submits that the magistrate court as well as the revisional court have prima-facie not considered the aspect whether the person who lodged the complaint was competent enough under the PCPNDT Act to file a complaint or not. He submits that under the PCPNDT Act it is the specific authorised officer who can file the complaint before the appropriate court and in the instant case the person who has lodged the complaint is not the authorised officer to file complaint nor is there any sort of notification adduced by the complainant before the court below to show that he is in fact the person who has been authorised under the PCPNDT Act in the State of Chhattisgarh to file the complaint.

7. Learned counsel for the petitioner further submits that he has preferred the present petition only assailing the competency of the authority who has filed the complaint and since the inception of complaint itself was by a person who is not competent under the PCPNDT Act, therefore, the order for registration of the complaint itself was bad in law which the learned magistrate did not notice at the time of ordering for registration of the complaint. The revisional court has also not considered this aspect of the matter in its proper perspective and has also not considered the objection raised by the petitioner while passing the impugned order in a mechanical manner holding the petition under Section 399 read with section 377 Cr.P.C. not maintainable, further holding that rather the petitioner ought to have preferred a petition under Section 482 Cr.P.C. leading to filing of this petition.

8. According to counsel for the petitioner, the PCPNDT Act specifically enumerates the procedure for taking cognizance of offence under Section 28 of the said Act which clearly deals with the cognizance of offence and for ready reference the relevant portion of Section 28(1) of the said PCPNDT Act is reproduced 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."

9. A plain reading of said section itself clearly depicts that the court shall take cognizance of an offence in the event if the complaint is made by an appropriate authority authorised in this behalf by the State Govt. For the State of Chhattisgarh, the appropriate authority is the District Magistrate and therefore the complaint under Section 28 of the Act ought to have been filed by the District Magistrate himself or else by an officer who has been duly authorised by way of notification in this behalf to be the appropriate authority.

10. The appropriate authority under the PCPNDT Act has been defined under Section 17 of the Act and relevant portion so far as the State Govt. is concerned, the same is Section 17(2) which is being reproduced as under:

17. Appropriate Authority and Advisory Committee.--

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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.

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11. In furtherance to the Chennai High Court judgment, he further referred the judgment of M.P. High Court in case of Dr. Manvinder Singh Gill v. State of Madhya Pradesh, Misc. Criminal Case Nos. 4393 and 4395 of 2013, decided on 04.07.2013, wherein, in the similar set of facts, the M.P. High Court allowing the said petition has categorically held that the person who has riot conferred with the powers as is required under Section 17(2) of the PCPNDT Act, then he cannot be treated as an appropriate authority or the officer authorised for the purpose of Section 28 of the said PCPNDT Act and prayed for allowing the CrMP and questioning the entire proceedings initiated at the behest of the Deputy Collector.

12. So far as the stand of the State Govt. is concerned, opposing the petition, the learned state counsel referred to document Ex. R/2 which is a letter issued by the Secretary, Department of Public Health and Family Welfare on 01.03.2008 whereby the Secretary had directed that the District Magistrate shall nominate an executive magistrate on his or her behalf in accordance with rules 11 & 12 of the PCPNDT Act for strict implementation of the said Act. He further rely upon the note-sheet dated 22.12.2014 whereby when the team from Delhi had come, the Collector had appointed Ms. Neha Kapoor, Deputy Collector to accompany the said team for the purpose of inspection at Raipur district and hence according to the State counsel, it clearly fulfils the requirement under Section 17(2) of the PCPNDT Act, and therefore, it cannot be said that the Deputy Collector was not competent and authorised officer for the purpose of lodging complainant as is required under Section 28 of the PCPNDT Act and prayed for dismissal of the Cr.M.P.

13. Having considered the rival contentions put forth from either side, the admitted position in the instant case is that it was the Deputy Collector who has filed the complaint case before the JMFC, Raipur. He has not filed the complaint case in the capacity of being an authorised officer under the PCPNDT Act. Rather, she has filed the complaint in the capacity of an officer who had only assisted the NINC team who had come from Delhi for inspection of the Sonography Centres at Raipur. A comparison of the facts of the present case with the facts of the judgment passed by the MP High Court in Dr. Manvinder Singh Gill (Supra), it would reveal that the facts of both the cases are identical in nature.

14. Reply of the State Govt. also has not been able to provide strength to the contention of the State Govt. nor has the State been able to justify or explain as to how the Deputy Collector was the competent officer to lodge complaint under the PCPNDT Act. The State has also failed to show any form of authorisation in favour of the Deputy Collector by which it could be said that she was competent enough to file complaint. It is difficult to accept the contention of the State so far as the authority of the Deputy Collector is concerned. It is also hard to bring the Said Deputy Collector within the ambit of definition of appropriate authority or an officer authorised by the State in the absence of any notification in this regard. Hence, the entire action initiated at the behest of the Deputy Collector gets vitiated only for the reason that she is not the competent officer to lodge complainant as is required under Section 28 of the PCPNDT Act.

15. The stand of the State Govt. makes it clear that the Deputy Collector was only appointed to accompany the said Team for the purpose of inspection, but that cannot be construed to be authorisation of the said officer for the purpose of invoking the provisions of Section 28 of the PCPNDT Act.

16. The judgment of MP High Court in Dr. Manvinder Singh Gill (Supra) was put to test before the Supreme Court by the State of Madhya Pradesh vide Special Leave to Appeal (Crl.) No. 2226/2014. The Supreme Court vide order dated 03.08.2015 while

dismissing the said SLP of State has affirmed the judgment of MP High Court holding that unless a complaint is made by an "appropriate authority" or by an "Officer authorised" by the State Govt., the same cannot be held to be a valid complaint. It has further approved the stand of MP High Court that the officers who were authorised by the appropriate authority to help in monitoring an effective implementation of the PCPNDT Act cannot be constructed as an officer authorised under the Act for the purpose of Section 28 of the PCPNDT Act.

17. The judgment of Chennai High Court in Dr. Mantmegalai (Supra) referred to by the petitioner also enunciates the same proposition and adds to the fact that in case if the complaint has to be made by any other person that can only be after giving statutory notice to the appropriate authority of its intention to make complaint to the court, which again has not been done in the present case and for this reason also the complaint lodged by the Deputy Collector, Raipur would be untenable.

18. In view of judgment of Supreme Court affirming the judgment of MP High Court in case of Dr. Manvinder Singh Gill (Supra), in the opinion of this court, present case also squarely falls within the factual matrix of that case.

19. Therefore, applying the same analogy in the instant case also, the complainant being Deputy Collector not being duly notified by the State Govt. to act as an appropriate authority or as an officer authorised by the State as is required under Section 17(2) of the PCPNDT Act for the purpose of filing of complaint under Section 28 of the Act, the complaint preferred by the Deputy Collector before the court of Judicial Magistrate First Class, Raipur, cannot be said to be in conformity to law, and therefore, the same deserves to be and is hereby set aside reserving right of the State Govt. to take appropriate recourse of law after following the procedures prescribed and enunciated under the said PCPNDT Act.