

Judgment

1

Judg. R.C.C. 893/2013

Received on : 04/03/2013

Registered on : 04/03/2013

Decided on : 8/01/2015

Duration : Y. 01 M.10 D. 04

IN THE COURT OF THE JUDICIAL MAGISTRATE, FIRST CLASS,
(6th Court), THANE

(Presided over by : P. P. Bharsakade-Wagh)

REGULAR CRIMINAL CASE NO. 893/2013

Exh. No. 60

Dr. Arvind Harishchandra Kakade

An adult, Occupation- Service,
Mira Bhairder Municipal Corporation,
Chhatrapati Shivaji Maharaj Marg,
Bhayander(W), District Thane

... Complainant

V/s.

Dr. Madhu Agrawal

An adult, Occupation- Medical Practice,
Madhu Maternity and Nursing Home,
1st Floor, Tapasya Apartment,
Behind Hamara Bazar, Bhayander(W)
Dist. Thane

... Accused.

Appearance : Shri Gogate, Advocate for the complainant.
Shri Vishal Bhanushali, Advocate for the Accused.

: J U D G M E N T :
(Delivered on this 8th day of January, 2015.)

Accused is prosecuted for the offences punishable under section 23 of the Pre-conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994 (Hereinafter referred to as 'PCPNDT Act') r/w Rule 9(4), Rule 9(1), Rule 9(7) and Rule 18(viii) of the Pre-conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) rules 1994 (Hereinafter referred as 'PCPNDT Rules')

2] Brief facts of the complainant's case are as under -

One Mr. Pramod Padwal is acting as a Medical Officer of Health and is appointed as an Appropriate Authority under the PCPNDT Act vide Government Notification 2008/971/pra.Kra.273 /Ku.Ka.2 dated 2/4/2009. Mr. Padwal by delegating his powers has authorized Dr. Arvind Kakade (Complainant), Medical Officer at Vinayak Nagar Health Center, to take inspection of Sonography Centers within its Jurisdiction and if any defects/ contravention of the said Act are noticed, to take legal action in that regard.

3] That On 7/11/2012 the district Civil Surgeon and District Appropriate authority, Thane informed Dr. Pramod Padwal that they have received a complaint regarding functioning of the Sonography Center of the accused and requested him to carry out inspection of the said Sonography Center. Accordingly Dr. Padwal informed about the said complaint to the complainant as the

sonography centre was in his jurisdiction. Therefore, the complainant and Dr. Balnath Chakor alongwith two panch witnesses, visited to the Nursing Home namely 'Madhu Maternity and Nursing Home' of the Accused in working hours. After inspection of the record of the Nursing Home, it was observed that the accused had not maintained the record as provided by Rule 9(2) of the PCPNDT Act. The sonography reports of all the patients were got done by the Accused from outside and Accused has referred the said patients for that purpose to others with an apparent intention to avoid restrictions and repercussions under the PCPNDT Act. It was seen that the accused had not maintained the OPD register. Not a single Sonography report such as sonographic plates or slides of pregnant patients were available either in physical form or on the computer. Hence the complainant carried out panchanama in presence of two panchas and seized the registers as well as sonography machine. He informed the accused about the breaches of law committed by her and called her explanation but she refused to give any statement in defence. Thereafter show cause notice was issued to the accused. After considering her case, Dr Padwal, appropriate authority, suspended her registration for one year from 27-12-2012. This complaint came to be filed against the accused for contravening the provisions of the PCPNDT Act.

4] After recording the evidence before charge, vide Exh. 30 charge was framed for the offences regarding contravention of the provisions of rule 9(VIII) and 18 of the PCPNDT Rules,

punishable under Sec. 23 of the PCPNDT Act. Thereafter on 2/12/2014 charge came to be altered for contravening the provisions of Rule 9(4),9(1), 9(7) and Rule 18(VIII) of the PCPNDT Rules punishable under section 23 of the PCPNDT Act. The charge was read over and explained to the accused to which she pleaded not guilty.

5] The defence of the accused, as transpired from the cross-examination of the witnesses as well as from her statement under section 313 of Code of Criminal Procedure, is that she has maintained all the records as per the provisions of PCPNDT Act and Rules. Second defence is that her record was upto date and she used to submit all the 'F' forms every month to the appropriate authority, so also, the appropriate authority used to visit her maternity home quarterly and found no defect in her record at any time. Thus her defence is of total denial and false implication.

6] Complainant adduced evidence by examining himself as (PW. No. 1) at Exh. 18. He also produced and proved the contents of the letter issued by Health department at Exh.18, Letter from Mira Bhayander Municipal corporation dtd 15.7.2011 at Exh. 19, Authority letter issued to him by MBMC at Exh 20, letter dated 21-11-2012 at Exh 21, panchanama at Exh 24, letter issued to the accused at Exh 25. Complainant also examined Geeta Patil (PW. No. 2) at Exh. 39 and Panch witness Chetana Devendra Patel (PW. No. 3) at Exh. 44.

7] The complainant, Dr Kakade (PW.1), has affirmed that Dr. Pramod Padwal is working as a Medical officer in Mira Bhayander Municipal Corporation. He is appointed as an appropriate authority, Vide the Government Resolution (Exh. 18) dated 2/04/2009 sent by the State of Maharashtra. Vide the letter dtd 15/07/2011 (Exh. 19), Dr Padwal has delegated his powers to him to act as an appropriate authority in the area of Vinayak Nagar, Mira Bhayander Corporation. Dr Padwal has given authority letter (Exh. 20) to him for taking action against the sonography centres for contravention of the provisions of PCPNDT Act. He further deposed that Dr. Padwal had received a letter (Exh. 21) from the District Civil Surgeon and the same was forwarded to him and Dr. Balaram Chakor for conducting inquiry and taking action as per the PCPNDT Act. In view of the said letter he and Dr. Chakor went to the Madhu Maternity and Nursing Home at Tapasya Appt., Bhayander along with two panchas. The staff told that the accused was in the consulting room. They went inside the consulting room and gave their introduction to the accused. The accused introduced herself as Madhu Agrawal. The accused had not displayed her nameplate on her dress as required by law. They asked the accused to show the 18 point register, MTP Registers, delivery register, 'F' Form, ANC register, UPT Register etc. Accordingly she produced all the registers. After verification, it was seen that 7 'F' forms were incomplete.

8] He further deposed that they asked the accused to produce the sonography reports of the pregnant women. But she

failed to produce the same. They also made inquiry with the accused whether those reports are saved on the computer. The accused told that the information was not saved on the computer. She was not possessing sonography plates of any of the patient. Her explanation was called about the said lacuna but she admitted her mistake and told that such mistake will not occur in future. He told that they need to do panchanama. Accordingly they carried out the panchanama(Exh 24) and seized the sonography machine and obtained signatures of two panchas on it. They also seized 157 'F' Forms (along with 7 incomplete 'F' forms), Delivery register, MTP register, two ANC Register, MTP consent forms, UPT register, one file containing documents and 18 point register. They sealed all this record and obtained signatures of two panchas on it. They also signed it and signature of the accused was also obtained on it.

9] He further deposed that Dr. Padwal sent a show cause notice to the accused. She gave answer to that notice, which was not found satisfactory. Therefore Dr. Padwal sent Registration Suspension letter (Exh. 25) to the accused.

10] In his cross-examination, the complainant has admitted that he used to visit the Madhu Maternity Home since April 2011. He was quarterly visiting Madhu Maternity home. He further admitted that as per the provisions of PCPNDT Act, Madhu Maternity Home was furnishing records on every month. He also admitted that on every quarterly visit, all the records of

the maternity home was being verified. He denied that there was no lacuna in the records of the maternity home but he accepted that he does not have any proof regarding that in writing. He further admitted that he neither informed to his office nor informed to the accused about the lacuna in the record maintained by her prior to the said action.

11] The complainant further accepted that he was never accompanied by panchas on any visit. But he admitted that on 27-11-2012 while visiting Madhu Maternity home he took the panchas and ingredients required for seizure panchanama. He also accepted that prior to the said action their office had received a complaint against the Madhu Maternity Home. He had verified that complaint but he admitted that he had never met the said complainant Manju Pande or her neighbour to verify the truth in the complaint. He also admitted that he has not filed the said complaint on record which was received against the accused on the web site 'Aamchi Mulgi.Com'. He further admitted that Geeta Patil(P.W. 2) had called the panch witnesses and the pancha witnesses were informed about the action in advance. He admitted that it is not mentioned in their report or panchanama that any patient was present in the maternity home. He further admitted that the sonography results are mentioned in the 18 point register. He further admitted that all the entries were found up to date at the time of quarterly inspection. He deposed that he does not know whether the accused had come to the clinic just to collect her personal belongings.

12] Smt. Geeta Patil (P.W.No. 2) has deposed that she is a nurse. She knows Dr. Kakade(P.W.1) as he is a medical officer at Vinayak Nagar Health Centre. He told her that he needs two panch for inspection of a sonography center. Therefore she called two panchas namely Archana Chaurasiya and Chetana Patel and brought them to the Madhu Maternity Home. Dr. Kakade and Dr Chakor met them near the building in which Madhu Maternity home was situated. Dr. Kakade (P.W.1) gave instructions to the panchas. Thereafter they went to Madhu Maternity home. The accused was in her cabin. Dr Kakade introduced himself as well as gave their introduction to the accused. Dr. Madhu Agarawal had not worn apron as well as nameplate. Dr. Kakade told Dr. Madhu that he wants to inspect the records and registers related to Sonography. He found that Dr. Madhu Agrawal was not issuing sonography reports to the patients. It was also found that she had not kept a print of the said reports and had not saved it on the computer. Doctor asked her explanation regarding it. But she could not give any explanation. She accepted her mistake. She further deposed that Dr. Kakade seized the sonography machine and registers in her presence and carried out the seizure panchnama (Exh. 24).

13] Chetna Devendra Patel (P.W.No. 3) has deposed that on 27-11-2012 at about 4.30p.m. Geeta Patil had been to her house and asked her to act as a pancha. Hence she went to the Madhu Maternity Home alongwith Geeta Patil. At the entrance of the

building they met with Dr. Arvind Kakade, Dr. Chakor and Archana Chourasiya. Thereafter all of them went to first floor at Madhu Marternity Home. She further deposed that Dr. Madhu Agrawal was in her cabin. She had not worn apron as well as name plate on her dress. Dr Kakade asked for some registers. He checked the registers and papers. It was found that some papers were not fully filled up. The accused was unable to show the sonography reports and plates to the doctors as it was not available with her. Thereafter Dr. Kakade seized all the registers and Sonography machine in front of all of them and carried out panchanama and obtained her signature on it. Signature of the accused was also obtained on the panchanama. In her cross-examination she admitted that she is acquainted with Geeta Patil (PW.2) as she used to assist her in polio eradication programme.

14] Considering the evidence on record and written as well as oral arguments of both the sides, following points arise for my determination and I record my findings thereon with reasons as under-

SR. NO.	<u>POINTS</u>	<u>FINDINGS</u>
(1)	Whether the complainant proves that the accused has not maintained the records as specified in Form 'F' ? ..	No
(2)	Whether the complainant proves that the accused has not displayed her name on the dress worn by her ? ..	No

- | | | |
|-----|---|---------------------------|
| (3) | Whether the complainant proves that the accused has not maintained the register showing .. | No |
| | in serial order, the names and addresses of the men or women given genetic counselling and the date on which they first reported for such counselling ? | |
| (4) | Whether the complainant proves that the accused has not kept the printed copies of the .. | No |
| | sonography reports which is essential to be taken and preserved? | |
| (5) | What order? | ... Accused is acquitted. |

: R E A S O N S :

AS TO POINT NOS.1 to 4 :

All the points are interlinked hence they are discussed together to avoid repetition.

15] The learned advocate for the complainant, Shri Gogate, has submitted that the accused has committed breach of mandatory provisions by keeping lacuna in the record. He further submitted that the complainant has proved his case by adducing sufficient evidence. The accused has not given any explanation about the seizer panchanama as well as the action taken against

her by the appropriate authority. Hence presumption under section 24 of the PCPNDT Act arises in favour of the complainant and the accused has to rebut the said presumption. Hence the complainant need not prove his case beyond all reasonable doubts as required to be proved for the offence falling under IPC. He further argued that though it is not found that the accused was carrying out sonography to detect the sex of foetus, the lacuna which is kept in the record by the accused itself shows that the accused has aided contamination of sex of foetus. He further submitted that the mentality of people to have a male child is supported by the radiologists like the accused who are white collar criminals. Hence they are the most responsible persons in declining the ratio of female child. Lastly he submitted that to curb such type of practices and to save the society at large from such heinous crime, the accused should be punished.

16] Per contra the learned advocate for the accused, Shri Bhanusali, has argued that the action taken against the accused by the appropriate authority is ridiculous in nature. It was premediated. By referring to the evidence of Dr. Arvind Kakade (P.W.1) as well as witness Geeta Patil (P.W.2) and pancha Chetana Devendra Patel(P.W.3), he has tried to point out that the team had been to the clinic of the accused with a premediated intention of taking action against her under the PCPNDP Act. The complainant has not brought on record any specific lacuna kept by the accused in her record. By merely saying that the accused has not maintained the record properly cannot give rise to any offence. He

has also taken me through the registers which came to be seized from the accused. He further argued that the accused has maintained up to date record and she has quarterly got it verified from the office of the appropriate authority. It reflects that the accused was having all the information and upto-date record of each and every patient. Just because she was not having printer is not an offence itself. He further submitted that the accused has not committed any offence. Hence, he prayed for acquittal of the accused.

17] The aim and object of the PCPNDT Act as per its preamble was to provide, inter alia, for prohibition of sex selection and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto. It is necessary to set out the Statement of Objects and Reasons of the Act as well as of the Amendment Act 14 of 2003. The statement of Objects and Reasons of the Act are as under :

Statement of Objects and Reasons– *It is proposed to prohibit prenatal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects and dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.*

(2) *The Bill, inter alia, provides for -*

- (i) *prohibition of the misuse of prenatal diagnostic techniques for determination of sex of foetus, leading to female foeticide;*
- (ii) *prohibition of advertisement of prenatal diagnostic techniques for determination of sex;*
- (iii) *permission and regulation of the use of prenatal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;*
- (iv) *permitting the use of such techniques only under certain conditions by the registered institutions; and*
- (v) *punishment for violation of the provisions of the proposed legislation.”*

The statement of the Objects and Reasons of the Amendment Act 14 of 2003, insofar as they are relevant, reads as under :

“Statement of Objects and Reasons – *The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit prenatal diagnostic techniques (for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.*

2. *The prenatal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the*

foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.

3. *The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe, in the form of severe imbalance in malefemale ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to enact and implement in letter and spirit a legislation to ban the preconception sex selection techniques and the misuse of prenatal diagnostic techniques for sexselective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the large interests of the society.*
4. *Accordingly, it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of prenatal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended.”*

18] It is clear, that the PCPNDT Act was introduced to curb the extremely unfortunate and dangerous trend. The Legislature, therefore, provided for punishment for violation of the provisions of the said Act.

19] Now in view of all the above evidence and discussion

first of all, it is clear that, it is not the direct case of the complainant that the accused is engaged in sex selection techniques prior to conception as well as the misuse of prenatal diagnostic techniques for sex selective abortions.

20] The main allegations against the accused are that

1. The accused has not maintained complete record. Some 'F' forms were incomplete.
2. The accused was performing sonography however sonography reports of all such patients were got done from out side.
3. The accused has not maintained OPD register. She had not preserved the sonography reports such as sonography plates, slides of the pregnant patients either in physical form or on the computer.
4. The accused was not wearing her nameplate on the dress worn by her when the complainant visited her maternity home.

21] The charge is framed u/s 23 of the PCPNDT Act for contravention of Rule 9(4), Rule 9(1), Rule 9(7) and Rule 18(VIII) of the PCPNDT Rules. These rules are reproduced here for ready reference.

Rule 9(4) : *The record to be maintained by every Genetic Clinic, in respect of each man or women subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.*

Rule 18(viii): *Display his/ her name and designation prominently on the dress worn by him/her.*

Rule 9(1): *Every Genetic counseling centre, Laboratory,*

Clinic and imaging centres shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counseling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic test, the names of their spouse or father and the date on which they first reported for such counseling, procedure or test.

Rule 9(7): *In case Genetic counseling centre, Laboratory, Clinic, Ultrasound clinic and imaging centre maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.*

21] In a criminal case, the entire burden lies on the prosecution to prove its case beyond reasonable doubts. The principle underlying therein is that 'no innocent person should be punished'. Considering this basic principle, the evidence on record needs to be appreciated.

22] The PCPNDT Act introduced stringent conditions. Hence it also requires some mandatory procedure contemplated under it to be followed and if the said procedure is not followed, the whole allegation vitiates.

23] Seizure panchanama is one of the most important piece of evidence to connect the accused with the crime. Therefore it is necessary to see whether the complainant has followed the mandatory procedure provided in the PCPNDT Act while preparing the panchanama (Exh.24). Though the complainant has

examined Chetna Patel(PW.3) as a panch, it is necessary to see whether the complainant has proved the said panchanama (Exh.24) beyond all reasonable doubts by following the procedure laid down for seal and seizure of the documents and sonography machine.

24] In that regard, first of all, it is necessary to see the major requirements of the search and seizure and for drawing panchanama at the time of the raid. According to the provisions of the PCPNDT Act and guidelines provided by State Family Welfare Department, Pune, State of Maharashtra for conducting the seizure panchanama u/s. 30 of the PCPNDT Act, following are the major requirements :

1. Panchanama has to be made in front of two independent witnesses.
2. Every documents which is seized should be signed to identify either by the Appropriate Authority or by his authorized person.
3. Copy of each documents should be made in duplicate and one set of such documents should be provided to the concerned doctor.
4. It is mandatory on the part of the Appropriate Authority to mention on spot panchanama that he has been appointed as an Appropriate Authority by the State of Maharashtra.
5. While preparing panchanama, a separate list of seized machine and documents must be prepared.
6. The separate list should be given heading as 'Seizure panchanama' and the panchanama should be given heading as 'Spot Panchanama'.

7. The list of seized sonography machine and documents should be prepared in presence of the owner of the Centre and two independent panch witnesses.
8. Every document, which is seized, must be sealed for avoiding tampering of the same.

25] In the present case though the complainant has examined Panch witness chetana patel (P.W.3), she is not an independent witness. She is acquainted with the health department, ultimately with the complainant as she was assisting witness no. 2 Geeta Patil in the polio eradication programme. It is also nowhere mentioned in the panchanama that the panchanama is prepared in duplicate and one copy of it was given to the accused. A separate list of seized machine and documents is also not prepared by the complainant. The separate list containing heading as 'Seizure panchanama' and the panchanama containing heading as 'Spot Panchanama' is not prepared. Therefore, it is clear that, the complainant has not followed the procedure laid down for seal and seizure of the documents and sonography machine while carrying out the panchanama (Exh. 24). Hence it cannot be considered against the accused.

26] Appropriate authority, Dr. Arvind Kakade (P.W.1), has deposed about his visit to the maternity home of the accused and inspection and seizure of the records as well as sonography machine of the accused. The punch witness Chetna Patel(P.W.3) has also deposed on the same line. But it needs to be seen whether

their evidence inspires confidence to accept it to be true. For that purpose the cross-examination of Dr. Arvind Kakade (P.W.1) has to be looked into. In his cross-examination he has stated that on every occasion he was not receiving letter from Dr Padwal for taking action under PCPNDT Act. He has admitted that since April 2011 he used to visit quarterly to the Maternity Home of the accused. He has also admitted that the accused was forwarding her monthly records to their office so also he used to verify all the records during his quarterly visit to the Maternity Home.

Thus all these admissions given by Dr. Arvind Kakade(P.W.1) clarifies one aspect that since April 2011 till October 2012 he has never found any lacuna or discrepancy in the records maintained by the accused. On perusal of 18 point register and the record which has been seized from the Madhu Maternity Home on 27/11/2012, it reveals that the said 18 point register has been verified and signed by the appropriate authority till October 2012. He has admitted that he do not have any proof or record available in his office that there was any lacuna or discrepancy in the records maintained by the Madhu Maternity Home prior to taking the said action against the accused. It is seen from the endorsement on the 18 point register that the appropriate authority never found any discrepancy in the records maintained by the accused at any point of time.

27] Dr. Kakade (P.W.1) has admitted that the punch witness and all the ingredient necessary for seizure panchanama is not

always taken by him at the time of every visit. He further admitted that on 27/11/2012 he went to visit the maternity home of the accused alongwith punch witnesses and all the necessary requirements for seizure panchanama. He has also admitted that prior to taking action against the accused their office had received a complaint about the said Maternity home. In view of that complaint, the civil surgeon had asked to verify the said allegations made in the complaint.

28] The aforesaid admissions transpires that Dr. Kakade (PW.1) had been to the Maternity Home of the accused on 27/11/2012 with all the preparations and with an intention to take action against the accused. These admissions also reflect that during all his visits he was never accompanied by panchas and the things which are required for seizure panchanama. This conduct of the complainant reflects that he had visited the maternity home of the accused on 27/11/2012 with the only intention to take action against her.

29] Likewise, regarding the contention that the reports of the pregnant women such as sonographic plates or slides of the pregnant women were not available, it needs to be mentioned that on perusal of all the 'F' Forms as well as 18 point register it reveals that all the 'F' forms are properly filled in by the accused. 18 point register is also maintained upto date. All the 'F' forms are submitted to the appropriate authority for verification every month. No where appropriate authority has taken objection about

any lacuna on the part of the accused regarding the discrepancy in the record. It is also seen that the complainant has quarterly visited to the Maternity Home of the accused and found all the records upto date. Hence one cannot believe that the record which was found upto date by the appropriate authority till October 2012, suddenly became objectionable. Thus, it clarifies that the action has been taken on the basis of the record which was already verified by the appropriate authority. Hence it is arbitrary in nature and not at all justifiable.

30] As per the version of the complainant, the accused produced whatever documents were asked her to produce. It is not the case of the complainant that he took search of the Maternity Home but he did not find the sonography reports. As per rule 12 of the PCPNDT Rules, it was for the complainant to take search of the Maternity Home. He can not avoid his responsibility by merely saying that the accused did not produce the said reports. Second contention of the complainant is that the reports were also not saved in the computer. As per rule 9(7) of the PCPNDT Rules, in case the genetic counseling centre, Genetic Laboratory, Genetic Clinic, Ultrasound clinic and imaging centre maintaining the record on computer or other electronic equipment, a printed copy of the record has to be preserved by the responsible person. This rule itself clarifies that the records needs to be preserved only if the information is saved on the computer. The learned advocate for the complainant has argued that the sonography machine has its inbuilt structure to save the images which are found by it

during sonography. Hence, in my view, it was for the complainant to check the sonography machine to verify whether the sonography images were saved in it or not. Admittedly Dr. Kakade(P.W.1) has seized the sonography machine of the accused. He could have demonstrate to the court by verifying the said machine that the images were not saved in it. But nowhere it has been brought on record that he has checked the sonography machine at any time and found that the images were not saved in it. Except his oral testimony, the complainant has not brought any corroborative, rather the best evidence before the court.

31] In his evidence Dr. Kakade (PW.1) has stated that seven 'F' forms were incomplete. During the argument, the Ld. advocate for the complainant pointed out that it was observed that there were two patient's entries made on 8th April 2010 in the 18 point register, likewise there were 11 entries in September 2010, 10 entries in October 2010, 15 entries in November 2010 and 4 entries in December 2010. But 'F' forms in respect of those patients were not filled in by the accused. But in my view this argument advanced by the learned advocate cannot be considered as it has been advanced without any contention and evidence. Thus with the above argument, the Learned advocate has come up with a totally different story.

32] The evidence on record reflects that by raising the said objections regarding incomplete record and deficient record, the complainant has deviated from its own inspection observations

and the endorsement to that effect made by the then appropriate authority. As already clarified, the 18 point register clearly reflects that the appropriate authority has signed the 18 point register after verifying all the records maintained by the accused at the relevant time. He has not put any remark to show that the records of the accused was incomplete or he found some lacuna in it. Hence the complainant is now estopped from taking any objection about the previous records of the year 2010, which is already verified by the appropriate authority. Thus the action taken against the accused is something very ridiculous on the part of the appropriate authority.

33] One of the contention of the complainant is that the accused had not displayed her name plate over the dress worn by her. To consider this allegation again we need to go to the evidence of the complainant. The evidence reflects that when the complainant, alongwith his team, entered into the cabin of the accused at that time she was alone, no patient was there in the cabin. So also, nowhere it has been brought on record that some patients were present at the reception. The timings of the clinic of the accused is also not brought on record. The accused was not examining any patient at the relevant time. In such circumstances the defence of the accused that she had come to the clinic to collect her personal belongings, seems to be probable. The object of displaying the name plate on the dress is that the patient should know the name of the doctor who has examined him or her. It was not found that any patient was present in the cabin of the accused,

hence displaying of the name and designation becomes immaterial. Hence it cannot be said that the accused has contravened the provisions of rule 18(viii) of the PCPNDT rule 1996 by not displaying her name and designation on the dress.

34] It seems that the complaint has been filed only because some alleged complaint is received against the accused and that too without verifying the truth in the complaint. Merely receiving any complaint against any doctor does not mean that he/she is essentially involved in the sex determination techniques as contemplated under the PCPNDT Act. It reveals that throughout the complaint no specific allegations are there against the accused. So also it is not clarified whether the 'F' forms were incomplete or not at all filled in. Thus the allegations made against the accused are totally vague. It is true that the stringent provisions of PCPNDT Act are meant to save the girl child by keeping strict watch on the radiologists who are engaged in the business of ultra sound sonography of the pregnant women. But it does not mean that the innocent Doctors who are maintaining their records as per the PCPNDT Act and guidelines given by the appropriate authority have to suffer for their no fault.

35] Thus the complainant has utterly failed to prove the charges leveled against the accused. Hence she is entitled to be acquitted. The sonography machine needs to be desealed. Accordingly I answer point no 1 to 4 in the negative and in answer to point no. 5, I pass the following order.

: ORDER :

- 1 . The Accused, Madhu Agrawal is hereby acquitted of the offences punishable under section 23 of the PCPNDT Act r/w rule 9(4), rule 18(viii), rule 9(1) and rule 9(7) of the PCPNDT Rules 1996 vide section 248(1) of the Code of Criminal Procedure
2. Her bail bonds stand cancelled.
3. The seized records of the accused be returned to the accused after appeal period.
4. Sonography machine be desealed and handed over to the accused after appeal period.
5. The accused shall execute PR bond of Rs. 10,000/- as per the provisions of section 437-A of the Code of Criminal Procedure to appear before the Appellate Court, in case of appeal.

(Judgment dictated, pronounced and delivered in the open Court.)

Place : Thane
Date : 08/01/2015

(PP. Bharsakade-Wagh)
Judicial Magistrate First Class,
(Court No.6), Thane.