

ORDER BELOW EXH. 25

1. Accused No. 2 moved this application to de-seal the Sonography machine and permission to use it which is sealed, on the grounds that she is Doctor by profession running Sabale Surgical and Maternity hospital. The appropriate authority on dated 25/07/2014 due to political revenge and under the influence seized the machine. She also contended that the offence which is registered against her is false. She contended that since 2010 in her Sonography center no Sonography is conducted on the pregnant women and that is informed by her by the letter dated 08/11/2010 and also by letter dated 13/03/2013. She further content that she had not committed any kind of offence which falls under the PCPNDT Act. She also contended that the authorities in their meeting held that no such test are found at her hospital and even no any cognizance can be taken against that center. This view was taken by the committee. But due to political influence a false complaint is lodged against them and also the machine is seized illegally. So she prayed to allow her application as prayed.

2. Say is called from the state. They stated that the necessary boards which are to be display in the center are not displayed, the records are not maintained properly. So the doubt create about committing an offence at that center that the machine is an evidence as to whether any test are held or not. So it is return the evidence will be tamper. So the application to be rejected.

I heard Ld. counsels appearing for the applicant/accused No. 2 and APP for the state.

3. Before considering the application I like to state here that the complaint is lodged under Section 28 against applicant and the accused name Dr. Suryakant Arjunrao Sabale.

I gone through the complaint for determining this application. The complaint is lodged for the non producing the "F" form for scrutiny i.e. the violation of rule 10(1), 10(FA), 9(1), 21(1 & 2). Non mentioning the full name of the patients with the proper address, age and telephone numbers in OPD register. Non displaying the registration certificate in the waiting hall and it is violation of rule 19(4). Non keeping PCPNDT Act book in waiting room it is violation of rule 17(2). Non submitting of the Sonography monthly report to Civil Surgeon before 5th of every month & it is the violation of rule 9(8), non displaying the warning board of sex determine any where in hospital and it is violation of rule 17(1). No renovation of the hospital as per Bombay Nursing hospital since last 6 months. So the complaint is lodged under Section 28 for the offence punishable under Section 23, 25 of PCPNDT Act 1994 and violation of rule 1996.

4. I like to mention here the Section 23 and 25 of PCPNDT Act 1994. Section 23 relates that the offences and penalties. Section 25 penalty for contravention of the provisions of the Acts or rules for which no specific punishment is provided.

5. What I have to consider here whether the machine which is seized is to be De-seal and to handover to the applicant.

For that I gone through the panchnama. Perusing the panchnama which is drawn on 25/07/2014 does not state that the same that the said machine is being used for the purpose of commission of an offence under the PCPNDT Act. The applicant filed some documents in support to her application i.e. the proceeding of the meeting held on 14/01/2014, application to the District Collector and District Tahasildar of dated 13/09/2013 and an application of dated 08/11/2010.

I gone through the documents which are filed by the applicant i.e. application of dated 08/11/2010 which is in regional language and the crux of that application is that the Sonography center is closed and that is informed. Other application which is of dated 13/09/2013 address to the District Collector that since November 2010 no Sonography machine is used to test the pregnant women and it is informed that in her center only non/obstertrics are held. So the "F" form is not required.

6. Now considering this documents & an application it appears that since November 2010 the Sonography center is closed. Even from the panchnama which is of dated 25/07/2014 it nowhere appears that there was test of perception and prenatal diagnostic are held.

Here I have to take into consideration the object of the

Act i.e. PCPNDT Act. It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex & affects the dignity & status of women. It are (1) Prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide. (2) Prohibition of advertisement of pre-natal diagnostics techniques for detection or determination of sex. (3) Permission and regulation of the use to pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormality or disorders. (4) Permitting the use of such techniques only under certain conditions by the registered institutions and lastly punishment for violation of provisions that the proposed legislature.

If we take the spirit of the legislation for passing this act is to ban the sex selection and the misuse of prenatal diagnostic techniques for sex selective abortions and to provide for the regulation of such abortions.

7. The said foet so far of sealing of Sonography machine is concern the same is permissible as per Section 30 of the PCPNDT Act and particularly rules 11 and 12. But, then the same can be done if the Appropriate Authority has reason to believe that the said Sonography machine is being used for the purpose of commission of an offence under the PCPNDT Act. The panchnama the complaint nowhere recites about the said reasonable belief of the Appropriate Authority in this regard. Our Hon'ble High Court had

consider the aspect of reason to believe read with rule 11 and 12 of the rules of 1996 in a case of **Dr. Sukhadev Muley Vs. The State of Maharashtra, reported in 2012(6) All MR 778.**

In this case the applicant had informed about the closer of the Sonography center to the Appropriate Authority. I consider about the form "F" which is to be submitted and which is mandatory under the PCPNDT Act. The sub rule (4) read with proviso of sub section 3 of Section 4 of the Act requires the Doctor to keep record of each man or women subject to prenatal diagnostic procedural or test in form "F". The records will be kept in form of register showing Serial Numbers, Name, Address of the patients etc. Sub rule requires the Doctor to sent monthly report in respect of the patients examined by him during the month. The report is required to be sent on or before 5th day of every month.

In this case as hand the applicant had informed the Appropriate Authority in the year 2010 of the closer of the Sonography center. So the question of submitting the report in "F" form every month in my view does not arise. I like to rule on the Judgment of Our Hon'ble High Court **Dr. Gitanjali Narendra Thakur Vs. State of Maharashtra & others reported in 2013 (6) LJ Soft 30.** In this case the question of sealing of Sonography machine arises which was sealed. As from the panchnama and the complaint it does not appears that the machine was been used for commission of offence under PCPNDT Act. So the Sonography machine which is sealed is to be de-seal. So for the above reasons I conclude that Sonography machine is to be de-sealsd which is

sealed by the Appropriate Authority on 25/07/2014. Hence, I pass following order.

ORDER

1. Application is allowed.
2. The machine which is sealed on 25/07/2014 is to be de-seal and to be handover to the applicant No. 2 by taking a undertaking that she will not used the said machine for commission of any offence under the PCPNDT Act.
3. She will not dispute about the handing over the Sonography machine to her.
4. She to co-operate with the Appropriate Authority.

Date : 08/12/2014
Place : Majalgaon.

(R. K. Gujjar)
Judicial Magistrate, F.C.,
Majalgaon, Dist. Beed.