

ORDER BELOW EXH. 23

1. Accused No. 1 moved this application for discharge under Section 245 of Cr. P. C.
2. He contended that he is Government employee of the Government Hospital, Jalna and he is posted as Medical Officer. He contended that on the basis of the complaint filed by Mrs. Sumant Nagorao Wagh the Hon'ble court took cognizance and passed the order of issue process against him, but no case is made out against him. He also contended that he is falsely involved in this case due to professional grudge and enmity. He also contents that no any evidence is against him for keeping charge on him. So he prayed to discharge him.
3. APP filed his say contending that there are sufficient evidence against the applicant/accused No. 1. On the panchnamas drawn in this case the signature is appearing of the applicant. So he is also liable for running Sonography center. So at this stage there are sufficient evidence against accused. So he prayed to reject the application.
4. I heard Ld. counsel appearing for the accused and APP for the state.

5. Before considering this application the complaint is lodged against the applicant under Section 28 of PCPNDT Act. 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 proper address, age and their telephone numbers in the registers. Non displaying the registration certificate in waiting hall and it is violation of rule 19(4). Non submitting to the Sonography monthly report to Civil Surgeon before 5th of every month and it is violation of Rule 9(8), non displaying the warning board of such determination anywhere in the hospital and it is violation of rule 17(1). The complaint is lodged under Section 28 of the offence punishable under Section 23, 25 of PCPNDT Act and violation of rules.

6. I gone through the charge sheet and the documents filed. The certificate of registration issued by the competent authority is submitted along with the charge sheet. The name and the address of the genetic clinic is in the name of Dr. Sou. Kalpana Suryakant Sabale. This certificate is from the period 28/11/2010 to 27/11/2015. The accused along with this application filed the documents which I perused those documents are the application given to the District Collector and District Tahasildar. Going thorough the complaint from it nowhere appears that the accused/applicant was found while determining sex determination. In the complaint it is specifically

mentioned the owner of the hospital & Sonography center is Dr. Kalpana Suryakant Sabale. The applicant is husband of accused No. 2 i.e. Kalpana. No doubt on the panchnama which is on dated 25/07/2014 which was held in Sabale hospital, Majalgaon. The signature of Dr. Sabale i.e. applicant is appearing.

Reading Section 28 :- Cognizance of offences :- (1) No court shall take cognizance of an offence under this Act except on a complaint made by -

- (a) Not relevant.
- (b) A person who had 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.

Going through this charge sheet it is nowhere appearing that as per the PCPNDT Act the notice is given which is mandatory by the competent authority before lodging of the complaint. But no such notice is issued. Secondly, the certificate issued by their authority is to Sou. Kalpana Suryakant Sabale. So the involvement of accused No. 1 with the Sonography center does not arise as the center is in the name of Sou. Kalpana. From the complaint it appears that due to non submitting of the forms for scrutiny, non submitting the report to the Civil Surgeon were found by the appropriate authority but those center is runs by Kalpana Suryakant Sabale. So no question arise of applicant to submit the report to Civil Surgeon. So merely the applicant being

husband of the accused No. 2 Sou. Kalpana that does not mean he is liable for a acts which were not done by the accused No. 2. So at this stage after taking into consideration the statement recorded, going through the charge sheet no case is made out against the accused/applicant No. 1 which if un-rebutted, would warrant his conviction. So I am of the view that the accused to be discharged. Hence, I pass following order.

ORDER

1. Application is allowed.

2. Accused No. 1/applicant is hereby discharged under section 245 of Criminal Procedure Code.

Date : 06/02/2015
Place : Majalgaon.

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