

MHNS010065702025



Presented on : 06-10-2025
Registered on : 09-10-2025
Decided on : 11-03-2026
Duration : YY MM DD
00 05 05
Exhibit No. 12.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-6, NASHIK.
(Presided over by Smt. P. V. Ghule)

Criminal Revision Application No. 134 of 2025

- 1) **Dr.Bhushan Manohar Nikam,**
Age - 40 yrs., Occ. - Oncologist;
 - 2) **Dr.Sushil Ashok Nemane,**
Age - 42 yrs., Occ. - Medical Practitioner,
Both R/o.Sai Cityscan Center,
Kalvan-Deola Road, Kalwan, Tal.Kalwan,
Dist.Nashik.
- ...Applicants
(Ori. Accused)**

Versus

- 1) **Dr.Ashiq Husain Abbas Husain Shaikh,**
Age- 52 yrs., Occ. Government service,
Medical Superintendent Rural Hospital,
Kalwan, Tal.Kalwan, Dist.Nashik.
 - 2) **State of Maharashtra,**
Through D.G.P. Nashik.
- ...Opponents.
(Ori. Complainant)**

**Revision Application Under Section 438 of Bhartiya Nagrik Suraksha
Sanhita, 2023....**

Appearance :

Ld. Advocate Shri.G. P. Sanap for the Applicants;
Ld. APP Smt. Leena Chavan for Opponents.

J U D G M E N T
(Delivered on 11th March, 2026)

This is a Revision Application against the order dated 01.10.2025 below Exh.85 passed by Ld. Judicial Magistrate F.C., Kalwan in R.C.C. 148/2024 filed for offence punishable under Section 18(1), 23, 25, 29 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

2. Accused No. 1 is practicing Oncologist and accused No. 2 is Radiologist doctors who prayed for discharge. The discharge application is rejected by the Ld. Trial Court after evidence before charge was led. It is prayed that, order below Exh.85 dated 01.10.2025 passed by the Ld. Trial Court be set aside and Applicants be discharged on following grounds -

The order of Ld. Trial Court is improper, incorrect and illegal. It is bad in law without application of judicial mind. As per Section 268 of BNSS, 2023 the Ld. Trial Court ought to have discharge the Applicants. The Applicant Nos. 1 and 2 are Oncologist and Radiologist respectively and giving treatment for cancer. They are not engaged in sex determination nor do they run or assist in any Sonography center or diagnostic clinic within the PCPNDT Act. They are falsely implicated without any iota of evidence. The complainant himself is not Appropriate Authority and not Authorized Officer appointed by State Government and had no right to file such type of complaint against Applicants. The complainant is not Appropriate Authority as defined under Section 17 of PCPNDT Act. Complainant is merely holding a temporary promotion as Medical Superintendent. This fact is deliberately suppressed by the complainant and is

misusing the statutory powers without lawful authority. A temporary Medical Superintendent do not qualify as an Appropriate Authority under Section 17 of PCPNDT Act. Temporary promotion is without necessary Gazette Notification. There is vast difference between Medi Superintendent and Temporary Promoted Medical Superintendent. There is violation of Section 28(1)(b) of the PCPNDT Act. No Court shall take cognizance of any offence under the Act except upon the complaint made by Appropriate Authority. The compliance with procedure safeguards under the special Act is not optional but mandatory for valid prosecution. The complaint is silent on any specific act or omission by Applicants that would constitute an offence under PCPNDT Act. The Advisory Committee is not constituted as per PCPNDT Act, the report submitted by such a Committee may not be considered legally valid. The Committee's act are null and void as the Committee is not set-up according to the guidelines. The complainant and other members have not adopted proper procedure for search and seizure of records. The Applicants are entitled for discharge.

3. Prosecution has filed say that, the Ld. Trial Court has rightly passed order rejecting discharge application Exh.85 after examining in all five witnesses. The cross-examination of the witnesses was deferred. All the depositions are necessary for deciding the Revision. The matter is serious in nature. R & P be called and the application be rejected.

4. Perused papers and order of Trial Court. Heard both the sides. Ld. Advocate for Applicants has filed Written Argument at Exh.11.

5. Considering the above application and perusing record, the following points arise for determination and findings thereon are based on reasons below -

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
01	Whether order dated 01.10.2025 below Exh.85 is proper and legal ?	In the affirmative.
02	Whether it requires any interference from this Court ?	In the negative.
03	What order?	As per final order

REASONS

As to point Nos. 1 to 3 :-

6. Ld. Advocate for the Applicants has relied upon Hon'ble Supreme Court in the case of **Nashik Municipal Corporation Vs. Ranjit Narendra Mehta & Ors.** in **Petition for Special Leave to Appeal (Cri.) No.8847/2024** in which it is held that, *“Although the sonography machine was being used by the Doctors but the prosecution has failed to give any valid proof that sonography machine was being used for determination of sex on a pregnant woman.*

If the authority alleges that there was a breach of the provisions it must be able to demonstrate such a condition, since the authority has failed to do that, no offence is liable to be made out

and entire proceedings, therefore, are vitiated. Under these circumstances, the said proceedings have been quashed.”

Ld. Advocate further relied upon Hon’ble High Court, Bombay Bench at Nagpur in the case of **Dr.Sadanand M. Ingle Vs. State of Maharashtra in Criminal Application (APL) No. 172 of 2013**, in which it is held that, *“the Government Notification does not authorize an officer whose designation is Medical Superintendent, General Hospital of a given taluka. It only authorizes an officer who is designated as Medical Superintendent of Rural Hospital of a given taluka.”*

Ld. Advocate further relied upon Hon’ble High Court Bench at Nagpur in the case of **Dr.Anita Ravi Chauhan Vs. Appropriate Authority under PCPNDT Act in Criminal Application (APL) No. 174 of 2018** and in the case of **Suretech Hospital & Research Center & 1 Vs. Dr.Savita Ranjit Meshram & 1 in Criminal Writ Petition No. 192 of 2025**, in which it is held that, *“An Appropriate Authority under Section 17(2) of the PCPNDT Act, is such authority as is by Notification appointed in the Official Gazette by the State Government”*

Ld. Advocate also relied upon Hon’ble High Court of Chhattisgarh at Bilaspur in the case of **Dr. G.D. Meghani Barunomal Meghani Vs. Appropriate Authority PCPNDT Act through Addl. District Magistrate, Bilaspur in CRMP No. 141 of 2018**, in which it is held that, *“the Court shall take cognizance of an offence in the event if the complaint is made by an Appropriate Authority or Officer authorized in this behalf by the State Government / Central Government.”* .

Ld. Advocate for the Applicants submitted that, the accused are Doctors Oncologist and Radiologist. They never practice sex determination which is offence under PCPNDT Act. They are giving treatment for cancer. The offence against Applicants is prima facie is not made out as there is no sex determination by them in their entire career. The PCPNDT Act specifically prohibits sex selection and determination. If there is no evidence to prove that the accused are involved in such activities, they cannot be held liable under the provisions of PCPNDT Act.

It is submitted that, though the sonography machine was used by Applicants, there is no sex determination on any pregnant woman.

It is further submitted that, cross-examination of the witnesses of prosecution is deferred by Applicants. The evidence before charge by examining five witnesses is done in the Trial Court. Ld. APP submitted that, no single question in cross-examination is put to the five witnesses. There is no necessity to discard the evidence of the witnesses. The Trial Court has rightly proceeded to frame charge and reject discharge application.

7. Ld. Advocate for Applicants submitted that, complainant is holding temporary post on promotion to Medical Superintendent. He is not authorized person to file the complaint under Section 17 of PCPNDT Act. A temporary promotion to Medical Superintendent does not automatically qualify him as an Appropriate Authority. He do not have powers to become complainant under PCPNDT Act. The temporary promotion is without necessary Gazette Notification. It is

clearly mentioned in the Notification dated 16.03.2016 by Public Health Department at Exh.28 that “Medical Superintendents Rural Hospital / Sub-District Hospital / Cottage Hospital” is Appropriate Authority under the PCPNDT Act. Nowhere in the said Notification it is mentioned that, “Temporary promoted Medical Superintendent” have authority to exercise powers under Section 17(2)(3) of the PCPNDT Act. There is vast difference between Medical Superintendent and temporary promoted Medical Superintendent. In these circumstances, no Court shall take cognizance of any offence under the Act except upon a complaint made by Appropriate Authority. Ld. Trial Court ought not to take cognizance.

8. It is accepted that, Medical Superintendent is the authorized person to lodge complaint under the PCPNDT Act. It is not disputed that, complainant is temporary Medical Superintendent. It is seen that, complainant is authorized temporarily by the State Government to work as Medical Superintendent. He is appointed as Medical Superintendent and authorized person is seen. The Applicants did not cross-examination complainant PW-1 Dr.Asif Hussain Abbas Husain Shaikh who has deposed that, he is Medical Superintendent working in the Government Hospital. He has also deposed that, on 16.03.2016 Exh.28 he is appointed as Medical Superintendent for doing work under PCPNDT Act.

9. It is admitted by Applicants that, till 14.06.2024 the Applicants did not give report about the installation of the new machine. It is not denied that, by order dated 04.05.2022 Applicant

No.1 was granted permission by the committee to purchase new CT Scan machine. It is seen that, the Applicants were also using the said machine without giving report of installation to the Appropriate Authority. It is admitted fact that for non compliance and non reporting the said machine is seized under panchanama by PW-4 Dr.Abhay Bangal is deposed before the Trial Court. Dr. Varsha Choure Medical Officer is also examined in respect of seizure of the machine. According to the Applicants they also appeared before the Inquiry Committee and during Covid pandemic the machine was used to give treatment to the patients, however report remained to be submitted. It is seen that, the compliance under the PCPNDT Act was not done by Applicants. The complainant was temporary Medical Superintendent. There was no other Medical Superintendent, hence the complainant was the only authorized person. In my view, he will be made permanent in future, till then it cannot be said that, acts performed by him are illegal and without power. If the Medical Superintendent whether permanent or temporary do not take action under PCPNDT then people will, as of right do the illegal acts under PCPNDT, which is not the intention of the act. Whether Applicants were engaged in sex determination or not is the matter of Trial. There is no suggestion put by the Applicants to the five witnesses examined in respect of defence of applicants. The cross-examination is deferred to be taken later, that is after charge. The Trial Court has considered the evidence of five witnesses before charge along with the documents and rejected the discharge application because there is prima facie material to frame charge. The order of the Ld. Trial Court is legal and proper, do not require any interference. Hence, answered Point No.1 in the affirmative and Point No.2 in the

negative. Hence, the present Revision Petition is liable to be dismissed Accordingly, I pass following order.

ORDER

1. Criminal Revision Application No. 134/2025 is hereby dismissed.
2. No order as to costs.

Date : 11-03-2026

(Smt. P. V. Ghule)
Additional Sessions Judge-7, Nashik.