

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1638 of 2025

Prakash Kumar, aged about 29 years, Son of Jagdeo Mahto, Resident of
Barkagaon, P.O. and P.S. -Barkagaon, District -Hazaribag.

.... Petitioner

Versus

The State of Jharkhand Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner

.....
: Md. Razaullah Ansari, Advocate

For the State

: Mr. P.D. Agrawal, Spl. P.P.

.....

By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of the B.N.S.S, 2023 with the prayer to quash the entire criminal proceeding including the F.I.R. of Keredari P.S. Case No. 135 of 2024, corresponding to G.R. No. 746 of 2025 and the order dated 17.04.2025, passed by the learned Judicial Magistrate -1st Class, Hazaribagh by which the learned Magistrate has taken cognizance of the offences punishable under Section 23 and 25 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, on the basis of the charge sheet submitted by the police after investigation of the case.

3. The learned counsel for the petitioner submits that Section 28 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 bars any court from taking cognizance of an offence under this Act; except on a complaint made by the appropriate authority concerned or any officer authorized in this behalf by the Central Government or the State Government, as the case may be or a person who has given notice of not less than 15 days in the manner prescribed to the appropriate authority of the alleged offence and of his intention to make a complaint to the court but in this case, since an F.I.R. has been registered and consequent upon that upon investigation of the case, the learned Magistrate has taken cognizance otherwise than a complaint being made by the persons specified under Section 28 of the said Act, the same is not sustainable in law. In support of his contention, the learned counsel for the petitioner relied upon the order of Hon'ble Karnataka High Court in the case of **Dr. H.L. Mahendra Vs. State of Karnatka & Anr.**, reported in **2012 SCC Online Kar 3258**. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.
4. The learned Spl. P.P. submits that cognizance of the offence punishable under the penal provision of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection)

Act, 1994 can only be taken by the court upon a complaint being made.

5. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to refer to Section 28 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 which reads 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 the State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than 38[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.

***Explanation.** – For the purpose of this clause, “person” includes a social organisation.*

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.”

Has in no uncertain manner, mandates that court shall take cognizance of an offence under this Act only on a complaint made by the persons mentioned in the said section.

6. In the case of **State (NCT of Delhi) Vs. Sanjay and allied cases**, reported in (2014) 9 SCC 772, para -70 of which reads as under:-

“70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.”

The Hon'ble Supreme Court of India in the case of a similar provision under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 has held that the prohibition of cognizance being taken otherwise than on complaint made by the duly authorized officer, renders the F.I.R. lodged for the offences of the Mines and Minerals (Development and Regulation) Act, 1957 to be bad in law.

7. Now coming to the facts of the case, the only offence alleged to have been committed by the petitioner is punishable under Section 23 and 25 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. As the cognizance has been taken based otherwise on a complaint made by the appropriate authority concerned as mentioned in 28(a) or the person as mentioned in 28(b), this

Court has no hesitation in holding that the order dated 17.04.2025, passed by the learned Judicial Magistrate -1st Class, Hazaribagh in connection with Keredari P.S. Case No. 135 of 2024, corresponding to G.R. Case No. 746 of 2025, wherein cognizance has been taken based on the charge sheet submitted by police, is not sustainable in law. Accordingly, the same is quashed and set aside.

8. This criminal miscellaneous petition is allowed to the aforesaid extent only.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 26th November, 2025
AFR/Sonu-Gunjan/-

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