



O R D E R

Leave granted.

The order passed by the High Court, in exercise of the powers under Article 226 of the Constitution permitting the Sonography machines to be sold, is challenged by the State here. It so happened that there were some complaints against the practicing doctor - the respondent herein that he was engaged in sex determination and found to be indulged in breach of the provisions of Pre-conception and Pre-natal Diagnostic Techniques {Prohibition of Sex Selection} Act, 1994 (hereinafter called 'the Act').

A sting operation was conducted. According to the State, respondent was caught and in pursuance of provisions of the Act, the machines were sealed & seized in pursuance of the powers under Section 30 of the Act. Section 30 specifically provides that any seizure and sealing under the Act by the Appropriate Authority

..2/-

:2:

relating to the Searches and Seizures would be governed by the provisions of the Criminal Procedure Code, 1973. Accordingly, the machines were sealed and seized. A seizure memo was also issued. It seems that a Report was made to the Police. On that basis the charge-sheet was filed against the accused. The accused had directly approached the High Court by way of a Writ Petition under Article 226 of the Constitution, basically praying therein for return of the machines. The High Court passed the order on 3.3.2008 giving certain directions. The High Court had observed that there were two orders of the similar nature passed on earlier occasions though in different cases and, therefore, the High Court had exercised its jurisdiction in issuing certain directions. The High Court ultimately permitted sale of the machines and it observed:

It is clarified that after completion of these formalities, the petitioner shall approach this Court with particulars if the petitioner is inclined to enter into an agreement to sell and the proposal deal will be subject to the condition which may be imposed by this Court.'

Needless to say, that the High Court gave directions to advertise for sale of those machines. Accordingly, the accused writ petitioner before the High Court filed an interim application on the basis of which the High Court passed the order permitting sale of the machines.

..3/-

:3:

The order passed by the learned Single Judge seems to have been confirmed by the Division Bench and that is how the Appropriate Authority is before us.

At the outset, though this ground has not been raised in the special leave petition, we asked a question as to how the High Court can exercise jurisdiction under Article 226.

In this matter, it was clearly the exclusive jurisdiction of the concerned Magistrate since the question pertained to the custody of the property seized in a criminal offence investigation. There does not appear to be any observations by the High Court regarding its jurisdiction and the only reason why the High Court seems to have passed the order, that it did, is that on earlier two occasions similar orders were passed. We do not think that the High Court had jurisdiction to pass any orders under Article 226 as there appears to be a criminal offence registered against the writ petitioner under Sections 4(1), 5(2), 6(a) and Rule 9(4), 10(1), 18(1), 23(1) and 9(6) of the Act. It is also reported that a charge-sheet has been filed on the basis of investigations made by the Police as well as the Appropriate Authority. Therefore, it was as a question of the custody, interim or otherwise by the Appropriate Authority involved in the Commission of the Offence then

...4/-

:4:

the exclusive jurisdiction would be that of the concerned Magistrate.

The exercise of powers under Article 226 would be out of question. We, therefore, quash the Appellate Order of the High Court which has not considered the question of jurisdiction and further hold that the writ petition is not maintainable. The same is accordingly disposed of, however, in the circumstances, without any costs.

Mr. Ahmadi, learned counsel appearing for the respondent submits that he will file an application under Section 451/457, Code of Criminal Procedure, before the concerned Authority. If such an application is made, the same shall be considered expeditiously and decided within fifteen days from the date of making the application, uninfluenced by any of the observations made by any of the courts.

.....J

(V.S. SIRPURKAR)

.....J  
(MUKUNDAKAM SHARMA)

NEW DELHI ;  
DECEMBER 9, 2009.