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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 07.03.2023***
Pronounced on: 24.04.2023

\+ **CRL.M.C. 1352/2023 & CRL.M.A.5184/2023**

MANOJ KRISHAN AHUJA ..... Petitioner

Through: Mr. Govardhan, Sr. Advocate with Ms. Jyotsna Bhuchar and Mr. Anmol Singh, Advocates

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Manoj Pant, APP for the State with SI Bharat Singh, P.S. Sunlight Colony.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

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SWARANA KANTA SHARMA, J.

1. The petitioner, by way of instant petition filed under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter 'Cr.P.C'*), seeks quashing of FIR bearing no. 375/2018, registered at Police Station Sunlight Colony, New Delhi for the offences punishable under Sections 3A/4/5/6/23/29 of the Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (*hereinafter 'PC&PNDT Act')* and all proceedings emanating therefrom.

FACTUAL BACKGROUND

2. The case set out by the prosecution, in brief, is that the District Appropriate Authority, PC&PNDT, Rohtak had received an information regarding illegal sex determination of foetus being carried out at Jeewan Hospital, New Delhi by some of the doctors and the said information had been forwarded to Dr. Nitin, State Program Officer, PC&PNDT (DFW), who had accordingly informed the concerned authorities. Upon receipt of such information, the concerned authority in Delhi had constituted a joint raiding team comprising District Inspection Monitoring Committee (DIMC) Team, South East District, New Delhi and PC&PNDT Team, Rohtak, headed by SDM, Defence Colony, South East Delhi.

3. For carrying out the raid, two decoy patients i.e. Ms. Monika and Dr. Vijay Kumar had been sent to Delhi from Rohtak to meet Ms. 'X', who was involved in a racket of carrying out illegal sex determination, as per the information so received. Ms. Monika had been given Rs. 30,000/- in cash by the joint raiding team. Upon reaching Jeewan Hospital Gate No. 2, the decoy patients had met Ms. 'X' who had instructed Mr. Vijay to get himself registered at the reception in some other name i.e Rahul on the pretext of meeting the doctor for abdominal pain. It is alleged that Mr. Vijay (Rahul) had paid Rs. 850/- for the Ultrasound Sonography Test ('USG') and had handed over the OPD card and receipt of Rs. 850/- to Ms. 'X', who had then taken Ms. Monika, instead of Mr. Vijay (Rahul), for the USG Test to Dr. Manoj Krishan Ahuja i.e. the present petitioner. The petitioner had allegedly

conducted the test upon Ms. Monika and had given the report to Ms. 'X' who had further disclosed to Ms. Monika that the sex of the foetus was female. Thereafter, upon receipt of signal from the decoy patients, the joint raiding team had conducted the raid and the decoy patient Ms. Monika had identified the present petitioner as the one who had conducted the test upon her. The team had also carried out other formalities at the spot such as preparation of spot memo, panchnama, etc. and three USG machines had also been seized along with other relevant articles. It is alleged that Rs. 30,000/- were paid to Ms. 'X' by decoy patient Ms. Monika, out of which, Rs. 14,000/- was recovered from her and Rs. 12,000/- from the present petitioner. It is also alleged that foreign currency and Indian currency notes had also been recovered from the petitioner. As alleged, the petitioner had also not taken any ID proof of Ms. Monika nor had he filled the consent form 'F'. On the basis of this raid and recovery, the SDM, Defence Colony, New Delhi had given a hand-written complaint to the SHO, Sunlight Colony and the present FIR was registered against the accused persons.

4. On 21.12.2018, the petitioner, one Dr. Shikha and one Dr. Ravinder Sabharwal had received a Suspension Order-Cum-Show Cause Notice from the Office of District Appropriate Authority, South East Delhi whereby, by virtue of powers under Section 20(2) of the PC&PNDT Act, the registration of M/s. Jeewan Hospital had been suspended. Further, the District Appropriate Authority had also asked them to submit their replies within 2 days as to why actions may not be taken against them.

5. Pursuant to the investigation, chargesheet was filed by the prosecution against the accused persons on 26.02.2019, for commission of offences under Sections 3A/4/5/6/23/29 PNDT Act. The said Charge-Sheet was concluded stating that the investigation was still in progress pertaining to certain aspects of the offence.

6. The learned Metropolitan Magistrate-07, South East, Saket Court, Delhi (*hereinafter 'Trial Court'*) *vide* order dated 11.10.2019, took cognizance of the main and supplementary charge-sheet and proceeded to summon the petitioner to appear before it. The order dated 11.10.2019 is reproduced as under:

> "Considering the evidence brought on record, there is sufficient evidence to take cognizance of offences punishable u/s 3A/4/5/6/23/25/26/29 of PNDT Act read with Rule 9/17/18 framed under the said act read with section 120B IPC.
>
> Accordingly, cognizance of the aforesaid offences is taken:
>
> Copy of charge-sheet supplied to accused Kavita and Manoj Krishah Ahuja.
>
> Let summons be issued to accused i.e. Ravinder Sabherwal mentioned in column no. 11 of supplementary charge-sheet for supply of copies on 05.11.2019"

7. Aggrieved by registration of present FIR and cognizance having been taken by learned Trial Court on the chargesheet, the petitioner by way of present petition seeks quashing of the said FIR and all proceedings emanating therefrom.

SUMMARY OF ARGUMENTS

8. Learned senior counsel for the petitioner vehemently argues that *vide* order dated 11.10.2019, learned Trial Court not only took cognizance of the main and supplementary charge-sheet, but also proceeded to summon the petitioner to appear before it, without following correct and legal procedure as envisaged under PC&PNDT Act. It is stated that from bare perusal of records of the case, there are glaring procedural lapses and unlawful contraventions in the present case.

9. It is argued by learned senior counsel for the petitioner that cognizance of offences could not have been taken by the learned Trial Court under PC&PNDT Act in the absence of any complaint made by Appropriate Authority or any officer authorised on behalf of it, as per clear mandate of Section 28 of the Act, and cognizance taken on the basis of a chargesheet filed by the prosecution was impermissible and untenable in law.

10. It is also argued that as per provisions contained in Section 17(4) of PC&PNDT Act, only Appropriate Authority is authorised to carry out the investigation with respect to breach of provisions of the Act and Rules framed thereunder and the police has no role therein. It is stated that Appropriate Authority has been vested with ample powers in this regard by virtue of Section 17, 17A, 20 and 30 of the Act. It is stated that police is not competent to investigate cognizable offences under PC&PNDT Act and since in the present case, a major part of investigation had been conducted by police officials, it is against the intent and spirit of the Act. It is further stated that the Act is a special

legislation and is governed by its own provisions, which would prevail over a general law i.e, Cr.P.C. It is also stated that Rule 18A(3) of Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (*hereinafter 'PC&PNDT Rules'*) expressly provides that police cannot be involved in cases falling under PC&PNDT Act, which can well be appreciated given the nature of offences which are committed by various medical techniques and equipment with which ordinary police may not be fully conversant. It is, thus, stated that all the investigation carried out by the police stands vitiated.

11. It is also contended on behalf of petitioner that the petitioner had never received the Suspension Order-Cum-Show Cause Notice in person. It is stated that on 02.01.2019, Dr. Shikha was fined Rs. 5,000/- for her role in the alleged violation under the PC&PNDT Act and was warned to remain more diligent in future. On the other hand, the reply of the petitioner was found to be unsatisfactory and no reason was given for such a decision. It is further stated that on 13.03.2019, the Chairman, District Appropriate Authority, Rohtak, *vide* a letter had clarified that there was no information received by them regarding the involvement of any doctors in the alleged racket of illegal sex determination.

12. It is argued by learned senior counsel that the FIR is not maintainable in its present form and the allegations in the FIR, even if taken at its face value, do not *prima facie* constitute any offence and is an abuse of process of law and, thus, deserves to be quashed by

invoking inherent powers under Section 482 Cr.P.C. and in view of settled principles of law in this regard.

13. Learned APP for the State, on the other hand, opposes the present petition and states that subsequent to cognizance being taken by the learned Trial Court, the Appropriate Authority had filed the appropriate complaint in this case on 02.09.2020. It is stated that the FIR cannot be quashed as the allegations are serious in nature and that the defect, if any, was cured after the complaint as per Section 28 was filed by the Appropriate Authority.

14. Learned APP for the State further states that involvement of the police is not barred under the Act. It is also stated that offences under PC&PNDT Act are cognizable, non-bailable and non-compoundable in nature as provided under Section 27 and the power of arrest in cognizable cases vests with the police only since no such power has been vested in the Appropriate Authority by virtue of PC&PNDT Act. It is vehemently argued that the words '*as far as possible*' in Rule 18A(3) of PC&PNDT Rules would show that the role of police in investigating cases under the Act and assisting the Appropriate Authority is not ruled out *per se*, and it is only the 'cognizance' which is to be taken by the Courts as per Section 28 of the Act.

15. The arguments addressed and the contentions raised on behalf of both the sides have been heard at length and the material on record has been perused.

THE HISTORIC BACKDROP

16. Prior to considering the case on its merits, this Court, in light of the facts and circumstances of the present case and the contentions raised before this Court, deems it fit to briefly review and analyse the historical background in which the PC&PNDT Act was introduced as well as the objectives which were sought to be achieved through its enactment, since quashing of FIR has been sought, wherein issue of interpretation of the statute is also involved, which will have to be considered and interpreted keeping in mind the objective to be achieved through this Act.

17. In the year 1994, the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted by the Parliament and was brought into force on 01.01.1996. By way of Amendment in the year 2003, the short title of the Act was amended to 'The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act'.

18. The background and circumstances which led to the enactment of the PC&PNDT Act are summarised in the 'Introduction' to the Act, which states as under:

> "In the recent past Pre-natal Diagnostic Centres sprang up in the urban areas of the country using pre-natal diagnostic techniques for determination dr sex of the foetus. Such centres became very popular and their growth was tremendous as the female child is not welcomed with open arms in most of the Indian families. The result was that such centres became centres of female feticide. Such abuse of the technique is against the female sex and affects the dignity and status of women. Various Organisations working for the welfare and uplift of the women raised their heads against such an abuse. It was

> considered necessary to bring out a legislation to regulate the use of, and to provide deterrent punishment to stop the misuse of, such techniques. The matter was discussed in Parliament and the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill, 1991 was introduced in the Lok Sabha. The Lok Sabha after discussions adopted a motion for reference of the said Bill to a Joint Committee of both the Houses of Parliament in September, 1991. The Joint Committee presented its report in December, 1992 and on the basis of the recommendations of the Committee, the Bill was reintroduced in the Parliament."

19. The root of the issue can be traced back to 1970s and 80s, when advancements in medical technology had made it possible to determine the gender of a foetus before birth. The PC&PNDT Act was enacted in 1994 in response to the widespread practice of sex-selective abortions, a practice which was driven by predilection for male children and social evil of female feticide which had deep social and cultural origins in India. The long-standing preference for male children led to a trend of sex-selective abortions which was, in turn, responsible for a significant decline in the female-to-male ratio.

20. The true intent of the legislature can be understood and appreciated from the Statement of Object and Reasons of an Act, which usually spell out the core reason for which the enactment is brought [See ***State of Tamil Nadu v. K. Shyam Sunder*** *2011 8 SCC 737*]. Thus, the goals which were meant to be achieved by the PC&PNDT Act can be well-traced to the Statement of Objects and Reasons of the Act, which is reproduced as under:

> "...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 and affects the dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.
>
> The Bill, inter alia, provides for:-
> (i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
> (i) prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex;
> (ti) permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;
> (iv) permitting the use of such techniques only under certain conditions by the registered institutions; and
> (v) punishment for violation of the provisions of the proposed legislation.
>
> 2. The Bill seeks to achieve the above objectives…"

21. The aim of PC&PNDT Act is to prohibit the misuse of pre-natal diagnostic techniques for sex-selective abortions and to regulate the use of these techniques for medical purposes only.

22. The objective of the Act can also be understood from its long title, which reads as under:

> "An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto."

23. The PC&PNDT Act makes it illegal to determine the sex of a foetus through any means, and to conduct any tests or procedures that could lead to the selective abortion of a foetus based on sex. The Act also provided for the registration and regulation of all diagnostic centres and clinics offering pre-natal diagnostic services.

24. The Act was further strengthened in 2003 with the inclusion of provisions for more stringent provisions to ensure better implementation. The amended Act increased the penalties for violation and made it mandatory for all ultrasound clinics and machines to be registered and monitored and paved the way for establishment of State and National Boards to oversee the implementation of the Act.

ISSUES BEFORE THIS COURT

I. Cognizance of Offences under Section 28

25. The core legal issue before this Court, raised by way of present petition, is whether the learned Trial Court could have taken cognizance of an offence under this Act in view of Section 28 of PC&PNDT Act on the basis of a chargesheet filed by the police.

26. At the outset, it will be pertinent to take note of Section 28 of the PC&PNDT Act, which is at the heart of the entire controversy. The same is extracted 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

> State Government, as the case may be, or the Appropriate Authority; or
> (b) a person who has 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.
>
> 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 subsection (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.

27. As per Section 28, the Court of Metropolitan Magistrate/ Judicial Magistrate of first class is competent to take cognizance and try offences punishable under the Act.

28. Section 28 expressly provides for taking cognizance of offences under the Act by the Courts, only upon filing of complaint by (i) the concerned Appropriate Authority, or (ii) any officer authorised by Central Government or State Government or concerned Appropriate Authority, as the case may be, or (iii) any officer authorised by concerned Appropriate Authority, or (iv) any person who has given notice of at least 15 days to the Appropriate Authority of the alleged offence and his intention to file complaint before the Court.

29. In view of the above, either a complaint can be initiated by the Appropriate Authority, or even the Central Government and State Government can authorise an officer other than the Appropriate Authority contemplated under this Act to file a complaint on which

cognizance can be taken by the concerned Court. The Appropriate Authority may also delegate its power to someone to file complaint on its behalf who has been authorised by them. Further, any person, other than these authorities or officers, can also initiate a complaint, but only in terms of Section 28(1)(b), and the term 'person' also includes within its ambit a social organisation.

30. Thus, it is clear from a bare reading of Section 28 of PC&PNDT Act that there exists a bar on Courts as far as taking cognizance of an offence under the Act is concerned, and the same can only be taken in accordance with Section 28 of the Act.

31. In the present case, the concerned District Appropriate Authority in Delhi had received information from the District Appropriate Authority, PC&PNDT, Rohtak, regarding illegal sex-determination being carried out in a Hospital, and a joint raiding team had been constituted to apprehend the offenders. Pursuant to conduct of raid and search and seizures made thereof, SDM, Defence Colony, New Delhi had lodged a complaint with the police as a complaint disclosing commission of an offence which needed police investigation. The police, upon receipt of said complaint, had registered an FIR against the accused persons under Sections 3A/4/5/6/23/29 of the PC&PNDT Act. After conducting investigation, the police had filed chargesheet under Section 173 of Cr.P.C. before the learned Trial Court.

32. Having discussed the procedure contemplated under Section 28 of the Act in the preceding discussion, this Court notes that the manner in which the cognizance was taken by the learned Trial Court upon a chargesheet is not the procedure envisaged under the PC&PNDT Act.

In the present case, the complaint had to be filed by the concerned Appropriate Authority before the learned Trial Court as a complaint under Section 200 Cr.P.C. Since the cognizance has been taken on the chargesheet filed under Section 173 of Cr.P.C., it is clearly in the teeth of the bar under Section 28 of this Act which bars cognizance except upon receipt of complaint in the manner provided therein. It is also the *sine qua non* for taking cognizance that the said Appropriate Authority or the person so authorised should be validly appointed.

33. During the course of arguments, learned APP for the State had also produced a copy of complaint filed by the District Appropriate Authority before the learned Trial Court, almost a year after the cognizance had been taken in the present case, to contend that the irregularity, if any, stood cured.

34. On the contrary, it has been brought to the notice of this Court that the complaint filed by the Appropriate Authority on 02.09.2020 was filed as a separate complaint case, which has been registered separately *vide* CT Case No. 3778/2020, pending before the same Trial Court.

35. In the considered opinion of this Court, since Section 28 of the Act expressly prohibits taking of cognizance by the Courts in absence of a complaint made by Appropriate Authority or any other person authorised on its behalf, the complaint filed subsequently and registered and pending adjudication as per law under the Act cannot come to the rescue of the prosecution, more so since it will amount to prosecuting the same persons for same offences by two procedures prescribed under law i.e. by way of filing of a complaint case which was mandatory

under this Act and on the basis of cognizance taken of a chargesheet which is prohibited under the Act.

36. In this case, this Court also takes note of an order dated 15.07.2019 *vide* which the Appropriate Authority had granted 'sanction' under Section 28 to the police to prosecute accused no. 3 in the present FIR. The relevant portion of said order reads as under:

> "With reference to letter no 1538/R-SHO/PS LAJPAT NAGAR/ NEW DELHI dated-24/06/2019 regarding request for sanction under section-28 of PC&PNDT Act against the accused in the case filed vide FIR No-375/2018 at P.S. Sunlight Colony.
>
> By virtue of power granted under section 28.l(A) of PC & PNDT act, sanction is hereby conveyed to prosecute following accused in above mentioned case…"

37. In this regard, the request letter dated 24.06.2019, signed by concerned IO/Inspector, also mentions that sanction to prosecute accused no. 1 and 2 had already been granted earlier by the Appropriate Authority *vide* reply dated 16.04.2019.

38. From a perusal of the aforesaid, it seems that the word 'sanction' has been used in the letter for authorisation as per Section 28 of PNDT Act. The word which should have been used was 'authorisation' since under Section 28, the Appropriate Authority can authorise another person for filing a complaint on their behalf before the Court. The authorisation was, therefore, already on record in favour of the SHO/IO of the case.

39. However, this Court holds that technically, though the police had been authorised to prosecute the offenders, the same did not absolve the

Appropriate Authority of their duty to file a complaint which was mandatory under the PC&PNDT Act under Section 28. The Appropriate Authority, however, had filed a complaint in the Court on 02.09.2020. Therefore, the cognizance in absence of complaint of the Appropriate Authority was barred in law.

II. Is Police Investigation permissible under PC&PNDT Act?

40. Learned senior counsel for the petitioner had argued that no FIR or charge-sheet could have been filed in the present case since the offence alleged against petitioner relates to PC&PNDT Act, which is a special legislation and all the proceedings, including investigation, filing complaint, etc. can only be performed by the Appropriate Authority.

41. To the contrary, learned APP for the State had argued that in view of provisions contained in Section 27 of the Act, and considering the powers conferred upon the Appropriate Authority which does not include power of arrest etc., and also considering the terminology used in Rule 18A(3) of PC&PNDT Rules, the role of police, registration of FIR and filing of chargesheet cannot be faulted with in the present case.

42. To appreciate the contentions of both the learned counsels, this Court takes note of Section 27 of the Act, which reads as under:

> "27. Offence to be cognizable, non-bailable and non-compoundable. — Every offence under this Act shall be cognizable, non-bailable and non-compoundable."

43. Cognizable offences are those criminal offences where the police has the power to make an arrest without a warrant and start an investigation without requiring permission from a Court. Further, non-bailable offences are those where an accused cannot be granted bail as a matter of right. In this regard, reference can be made to the definitions of 'cognizable offence' and 'non-bailable offence' as provided under Cr.P.C., which read as under:

> "2. Definitions.—In this Code, unless the context otherwise requires,—
>
> (a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "**non-bailable offence**" means any other offence;"
>
> ****
>
> (c) "**cognizable offence**" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant..."
>
> (Emphasis supplied)

44. Further, Rule 18A of the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 provides for Code of Conduct to be observed by Appropriate Authorities, wherein Rule 18A(3) reads as under:

> "...(3) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter alia, shall observe the following conduct for processing of complaint and investigation, namely:-
> (i) maintain appropriate diaries in support of registration of each of the complaint or case under the Act;
> (ii) attend to all complaints and maintain transparency in

> the follow up action of the complaints;
> (iii) investigate all the complaints within twenty four hours of receipt of the complaint and complete the investigation within forty eight hours of receipt of such complaint;
> (iv) **as far as possible, not involve police for investigating cases** under the Act as the case under the Act are tried as complaint"
>
> (Emphasis supplied)

45. As per Section 27, the offences under the PC&PNDT Act have been classified as 'cognizable' offences without an exclusion clause barring the role of police. Similarly, the phrase "as far as possible" included in Rule 18A(3) would indicate that the role or assistance of police is not barred under the Act. Though the offences under the Act have been made cognizable, definition of which has as per Cr.P.C. has been reproduced in preceding para no. 43, it is not clear from the Act that since the police is duty bound to register an FIR when it comes to their knowledge that a cognizable offence has been committed and is empowered to arrest a person without a warrant, though Section 27 makes all the offences under the Act to be 'cognizable', what will police do in such eventuality.

46. However, this Court notes that Section 28 of PC&PNDT Act only bars taking of cognizance by Court of law and does not bar registration of FIR or investigation by police on the basis of a complaint lodged with the police.

47. In this regard, a reference can also be made to Section 4 of Cr.P.C. which provides as under:

> "4. Trial of offences under the Indian Penal Code and

other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

48. A bare perusal of the aforesaid provision would reveal that all offences under the Indian Penal Code, 1860, and also the offences under 'any other law', are to be investigated, inquired into, tried or otherwise to be dealt with as per provisions of Cr.P.C., unless an exception to the same is expressly provided in 'any other law'. As observed in preceding paragraphs, the offences under the PC&PNDT Act are cognizable in nature, and thus, registration of FIR or investigation by police as per law is not barred.

49. It is a peculiar situation, as **in the present case**, the raid was conducted by the Appropriate Authority as per mandate of the Act and the Rules. After all the search and seizures had been made and relevant documents had been prepared by the officials of Appropriate Authority as per provisions of the Act, they had informed the police. The articles recovered and seized during the raid such as marked currency notes recovered from the accused, bag containing other Indian and foreign currency, two laptops, three ultrasound machines, hard disk, etc. were handed over to the police which were taken into police possession

through seizure memo. Thereafter, the concerned SDM had lodged a complaint and had submitted along with it, the relevant documents which were prepared by the Appropriate Authority itself, such as spot memos, inspection performa, punchnama, office order, list of currency notes, statements of decoy patients, Form-F of two patients, documents relating to qualification and registration of accused persons, etc. Therefore, all the formalities contemplated under the Act were initially performed by the Appropriate Authority and only thereafter, the assistance of police was sought for the purpose of effectuating the arrest of accused persons. The police had also recorded the disclosure statements of the accused persons, and had carried out further investigation relating to recording of statements of witnesses under 161 Cr.P.C., ascertaining details regarding ultrasound machines, ownership details of hospital in question, investigation qua Call Detail Records of accused persons, etc.

50. Thus, tested from the facts and material on record of the present case, the proceedings in this case were initiated by Appropriate Authority. The initial investigation as per the Act was carried out by them and they had sought assistance of the police for further investigation. Since the Act does not bar the involvement of the police entirely and the Appropriate Authority could have taken assistance of the police, the assistance of the police in this case was thereby taken. The reason as to why the Appropriate Authority felt a need for taking assistance of the police will become clear only during trial and, therefore, it cannot be a ground for quashing of FIR.

51. A report under Section 173 Cr.P.C., in the present case, was only a part of investigation or an 'assisted investigation' under the PC&PNDT Act as the initial investigation including search, seizures, etc. was carried out by the Appropriate Authority. Since the offences under the PC&PNDT Act are cognizable in nature as per Section 27, as and when commission of a cognizable offence comes to the knowledge of police, the police is bound to register an FIR and conduct investigation. Thereafter, a report under Section 173 Cr.P.C. will also follow which can only be filed before a Court of law.

52. However, as observed in preceding discussion, the bar under Section 28 of the Act that cognizance can be taken only if a complaint of the Appropriate Authority is before the Trial Court is an absolute bar. Therefore, though registration of the FIR is not expressly barred under the Act on the complaint made by Appropriate Authority, taking of cognizance only on the basis of chargesheet filed by the police on the basis of such a complaint is barred. A similar view was also taken by the Division Bench of Hon'ble High Court of Punjab and Haryana in case of ***Hardeep Singh v. State of Haryana*** *CRM No.M-4211/2014*.

53. As held by Hon'ble Apex Court in ***Rasila S. Mehta v. Custodian, Nariman Bhavan, Mumbai*** *2011 6 SCC 220*, it is incumbent upon the Courts to interpret the statute in such a way that it protects and advances the purpose of enactment, and to not adopt any technical or restricted interpretation of the provisions which would negate the legislative intent and policy.

54. Albeit, it is not specifically provided in the Act that the Appropriate Authority can get an FIR registered after their preliminary

inquiry, search, seizure etc. or on a complaint received by them, the purpose of law cannot be defeated by quashing of FIRs where investigation also reveals commission of cognizable offence under the Act only due to lack of clarity in this regard in the Act. At the cost of repetition, it is to be noted that when the Appropriate Authority, as per mandate of PC&PNDT Act, informs the police about commission of offence under the Act, the police is duty bound and it is mandatory for them to register an FIR if commission of cognizable offence is made out.

55. Thus, the law has to be interpreted in a way that the object of enactment is not defeated, and in case of any conflict between two provisions in a statute, the Courts must strive to give effect to both by harmonising them with each other as far as possible.

III. Quashing of FIR in a case under PC&PNDT Act

56. The learned senior counsel for the petitioner had argued that registration of FIR in present case and subsequent filing of chargesheet was bad in law and, thus, was liable to be quashed. Learned APP for the State had argued to the contrary.

57. As far as this plea is concerned, it is to be noted that the High Court can exercise its inherent power under Section 482 of Cr.P.C. for quashing an FIR. The Hon'ble Apex Court has laid down the guidelines in this regard in case of ***State of Haryana v. Bhajan Lal*** *1992 SCC (Cri) 426*, which are extracted herein-under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

> 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.
>
> 103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

58. In ***Neeharika Infrastructure v. State of Maharashtra***, *2021 SCC OnLine 315*, a three-judge Bench of Hon'ble Apex Court has summarised the relevant principles that govern the law on quashing of an FIR under Section 482 of the Cr.P.C. The relevant observation are as under:

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to

secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self- restraint imposed by law, more particularly the

> parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and
>
> xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

59. The power under Section 482 Cr.P.C. has to be exercised sparingly and that too in the rarest of rare cases. Tested on the touchstone of aforesaid judicial precedents, the plea of present petitioner for quashing of FIR is not covered under the said principles as material regarding commission of the offence has been collected and filed in the form of chargesheet before the Trial Court and is also before this Court. As observed in preceding discussion, the object of the Act cannot be allowed to get defeated by quashing the FIR solely on the ground that police could not have investigated and filed chargesheet in this case, since the police assistance sought by Appropriate Authority is not barred completely by the Act.

60. In the present case, the complaint was received by the Appropriate Authority, and was dealt with by them under the Act and thereafter a complaint was lodged with the police as their assistance was sought for investigating the matter. Further, keeping in view that there is no complete bar in involvement of police under the Act, and the

words used in Rule 18A(3) are "as far as possible", neither the filing of chargesheet was vitiated nor the registration of FIR was bad in law. In case this view is adopted, FIRs registered under the Act and investigations carried out by the police pursuant to complaint by Appropriate Authorities culminating into filing of chargesheet against the offenders would have to be quashed on technical ground of no clarity or specific provision in the Act regarding the same.

61. The Act is silent as to what course is to be adopted and what is the repercussion of such chargesheet being filed in the court. As held by the Hon'ble Apex Court in the case of ***Rasila S. Mehta*** *(supra)*, the purpose of law is not to allow the offender to sneak out of the meshes of law and that "the statutes must be construed in a manner which will suppress the mischief and advance the object the legislature had in view. A narrow construction which tends to stultify the law must not be taken."

62. Thus, hyper technical grounds cannot become the basis of quashing of chargesheets or FIRs, especially when offences under the Act are cognizable in nature.

OBSERVATIONS OF THE COURT APROPOS THE NEED TO CLARIFY CERTAIN PROVISIONS AND PROCEDURES UNDER THE ACT

63. Before parting with this judgment, it is in the factual and legal background of this case that this Court is constrained to make certain observations, which are recorded in the succeeding paragraphs.

I. Joint Endeavour of Judiciary, Legislature and Executive to achieve Object of the Act

64. It is important to take note of the fact that since the enactment of PC&PNDT Act, there have been several efforts on the part of Judiciary in enforcing its provisions, ensuring its better implementation and even prescribing necessary guidelines. The Hon'ble Apex Court, in the year 2001, had issued a set of directions in ***Centre For Enquiry into Health and Allied Themes (CEHAT) v. Union of India*** *2001 5 SCC 577* to the Central Government, Central Supervisory Board, State Governments, and Appropriate Authorities after expressing that the Act was not being implemented to a large extent by the Central Government and State Governments. A further set of directions were issued by the Hon'ble Apex Court in ***Centre For Enquiry into Health and Allied Themes (CEHAT) v. Union of India*** *2003 8 SCC 398* since the concerned governments and authorities had failed to comply with the guidelines and directions issued in the year 2001.

65. Subsequently, the PC&PNDT Act was amended by the Parliament in the year 2003 to strengthen its provisions and improve its implementation. Some of the changes introduced through the Amendment of 2003, in simple terms, were: (i) improving the regulation of the technology used in sex selection by introducing new techniques of pre-natal diagnostic tests and procedures, (ii) increasing the penalties for violating the provisions of the Act, (iii) banning advertisements related to pre-conception and pre-natal determination of sex, (iv) clarifying the responsibilities of various Authorities and

Boards, (v) providing more powers to the Appropriate Authority for better implementation of the Act, etc. These amendments were aimed at addressing some of the shortcomings of the original Act and making it more effective in preventing sex-selective abortions. A reference in this regard can also be made to the Statement of Objects and Reasons of Act No. 14 of 2003, which read as under:

> "...The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit prenatal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.
>
> 2. The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before, conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.
>
> 3. The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to enact and implement in letter and spirit a legislation to ban the pre-

> conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex-selective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the society.
>
> 4. Accordingly, it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended..."

66. However, despite the above-discussed amendments, the implementation of the PC&PNDT Act continued to be a challenge in India. The Hon'ble Supreme Court in ***Voluntary Health Association of Punjab v. Union of India*** *2013 4 SCC 1* as well as in ***Voluntary Health Association of Punjab v. Union of India*** *2016 10 SCC 265* was pleased to issue directions to the Central Government and State Governments to take steps for effective implementation of the Act of 1994.

67. It is, however, noteworthy that to ensure proper implementation of the Act, the Ministry of Health and Family Welfare, Government of India in collaboration with United Nations Population Fund had issued '**Standard Operating Guidelines for District Appropriate Authorities**' in the year 2016. A perusal of the same also shows that these standard guidelines have been issued with a view to assess and guide the District Appropriate Authorities, at every stage, of the procedure to be adopted before and after a complaint is received and till culmination of the complaint to a logical end before a Court of law.

68. Within the said Standard Operating Guidelines, different sets of guidelines have been provided. To point out a few important aspects covered in the same, the 'Guidelines for Undertaking a Decoy Operation' *inter alia* provides that (i) a trustworthy woman should be chosen who is 14 to 22 weeks pregnant and who has been explained the gravity of the situation in a language she understands and whose consent has been taken to participate in a decoy operation, (ii) at the place of the crime, statement of the pregnant woman and the witnesses should be recorded, (iii) If the audio and video recording of the evidence has been done, a CD should be made and submitted in the Court at the time of filing the case, (iv) all the relevant documents and articles must be seized, (v) a complaint should be filed in the concerned Court by the Appropriate Authority as soon as the investigation is completed, enclosing all the documents including evidence collected during decoy operation and investigation, (vi) the Appropriate Authority or his/her authorised representative should be present in the Court at all times for the hearing of the case, etc.

69. Further, '*Guidelines for Responding to a Complaint*' *inter alia* provides that (i) investigation should be started within 24 hours and completed within 48 hours of receipt of complaint, (ii) on the basis of complaint, an inspection of the facility/centre should be carried out and completed as per the Rules, and registration of such facility/centre should be suspended immediately if it is found to have contravened the law, (iii) all search and seize procedures should be completed, (iv) statements of witnesses should be recorded and panchnama should be prepared after gathering evidence, (v) as per Section 24, no action shall

be taken against the pregnant woman since she is protected under the law, etc. Similarly, '*Guidelines for Filing a Criminal Complaint*' comprehensively deals with the aspect relating to Section 28 of PC&PNDT Act and explains the process as to how a complaint is to be filed before the Court by the Appropriate Authority. The process of filing has been divided into four segments i.e. preparatory process prior to filing a complaint case, documents to be submitted/annexed with the complaint, actual filing of the case, and general instructions. It is *inter alia* provided in these guidelines that such procedure should be followed under the guidance of a legal expert, and original documents should be submitted before the Court and proper follow-up of cases needs to be done by the officers of concerned Appropriate Authority.

70. However, the serious issue is that despite the fact that the judiciary, legislature and executive have made such efforts over the past more than 20 years, the Courts continue to encounter instances in which the relevant authorities are unaware of the proper procedure to be followed in cases governed by the PC&PNDT Act.

II. Impact Assessment of Laws, Practical Difficulties and Consequent Development of Jurisprudence by the Courts

71. The Courts have the authority through their judgments to initiate dialogues and develop jurisprudence if it is observed by a Court that a statute is unable to attain its intended purpose. This can also be done by bringing it to the notice of not only the public who seek justice from the Courts but of the Legislature also who has enacted the law with the

object of safeguarding the interests of people, welfare of its citizens as well as ensuring rule of law and to achieve social and gender justice in specific enactments.

72. In India, laws are enacted by the worthy Parliament. However, the impact of enactment of law is discernible only when it is implemented and entered in Courts of law. Therefore, it assumes importance to discuss, review and analyse as to whether the purpose and object behind the enactment of a law has been achieved or not, by justice adjudicatory force and consumers of justice i.e. the litigants of both sides.

73. As discussed above, the object and the historical background in our country leading to enactment of the PC&PNDT Act was noble to curb long practised social evil of gender based violence which began from the womb when a female child was not even born, commonly known as female foeticide. The very purpose behind enactment of the present Act was to protect a female child from violence even before she entered the world.

74. The social context of an enactment and the social context of the commission of offence need to be borne in mind as they are vital to do substantive justice. In this context, this Court notes that there has been a series of cases for last many years wherein the offenders seek invocation of powers under Section 482 of Cr.P.C. of High Courts to quash proceedings and complaints and set aside orders taking cognizance on the basis of police reports filed under this Act. While delving into the problem, it transpires that such a situation often arises due to lack of information and awareness among the masses as well as

the concerned Authorities under the Act as to how the complaints are to be lodged and processed under the Act.

75. As this Court has observed, keeping in consideration the social context of an Act and offence is vital to do complete and true justice. For a common man or a layman, a complaint for commission of any offence can be lodged with the police. Therefore, even in a case of information regarding sex determination test, the police is often approached as first authority for initiation of action against persons committing offence in contravention of provisions of this Act. The police is not the first authority competent to initiate action under the Act. However, if FIR is lodged at the instance of Appropriate Authority or any authorised person, and on its basis if either cognizance is taken or refused by the learned Magistrate, the parties approach the High Court for redressal of their grievance.

76. One common thread which runs through such litigation is the lack of information not only to the common citizen but also to the police, and in many cases Appropriate Authority, who invariably investigate the matter and file chargesheet under the Act and Indian Penal Code, 1860 before the Courts.

III. Judicial, Institutional and Constitutional Restraint by the Courts Vs. Pointing out the Grey Areas in an Act for the Legislature to cure for achieving Substantive Justice

77. Judicial decisions affect the practical world we live in and substantive justice is not served if the law which is sought to be

implemented remains ineffective due to procedural or related issues that need attention. These issues are understood in their true context by those who deal with the enactment at the ground level before and after it reaches the Courts of law.

78. The Courts are to work within the institutional and constitutional constraints and restraints under which they operate. However, the Courts are responsible to the citizens and strive to protect the rule of law which is as per their judicial and constitutional duty, despite such judicial and constitutional restraints in a democratic set up. The constitutional goal of social justice can be achieved by ensuring that the aim and object of legislation is not defeated, but it is the joint inter-institutional endeavour of the judiciary and the legislature.

79. In light of aforesaid, this Court has gone through the contents of '*Standard Operating Guidelines for District Appropriate Authorities*', details of which have already been discussed in para no. 67 to 69.

80. While doing so, it has been noted by this Court that one of the guidelines contained in '*Guidelines for Undertaking a Decoy Operation*' lays down that a woman who is 14-22 weeks pregnant can be used as a decoy customer/patient for the purpose of conducting a raid. However, it is mentioned that the consent of her husband, mother or mother-in-law is essential for the same even if she is a major. Moreover, they should also be explained the process and counselled in a language they understand. Though this Court holds a view that such guidelines may be against the philosophy of an independent adult woman's choices and discretion, it is for the Ministry concerned to reconsider or take call regarding the same.

81. One of the guidelines in '*Guidelines for Filing a Criminal Complaint*' also states that in case charges are framed, application for suspension of the registration of the doctor should be submitted to the State Medical Council and on conviction, the name of doctor shall be removed from the register of Council. In this regard, it can be noted that there are no guidelines as to what procedure is to be followed by the Appropriate Authority in case of discharge or if a Court declines to take cognizance under the Act.

82. This Court further notes that though the PC&PNDT Rules contemplate that '*as far as possible*' police should not be involved in the process of raids, search, seizure, recording evidence, etc., the practicality of this aspect needs to be re-considered since this procedure has to be as per Cr.P.C. for conducting raids at facilities/clinics which are running in contravention of any provision of PC&PNDT Act.

83. Another grey area of the Act, as also dealt with by this Court in preceding discussion, is that while the powers of investigation, search, seizure, raid, cancellation or suspension of registration of medical centres and facilities have been given to the Appropriate Authority, the offences under the Act have been made 'cognizable' without vesting the power of arrest in the Appropriate Authorities. As per Cr.P.C., in case of commission of a cognizable offence, the accused can be arrested without a warrant by the police. Therefore, this aspect of the Act remains ambiguous, which has also compelled several High Courts to examine the same.

84. Further, the present case at hand is one such example where it seems that the Appropriate Authority itself did not know, or without

due care, instead of filing the complaint as per mandate of Section 28 of the Act i.e. before the learned Trial Court, had lodged a complaint with the police for taking appropriate action against the accused persons and thereafter, the police had filed a chargesheet before the Court concerned *sans* the complaint by Appropriate Authority.

85. Well-intended and well-implemented PC&PNDT Act and Rules are means for intervention to combat gender imbalance. The social context of the Act as well as the offence needs to be remembered, and it has to be kept in mind that the gender based violence, whether be it safety of a female child after birth or even when she is not born, is not only the concern of the State, but also of the Courts of law. While the attitudinal changes have to start from every family, till the said goal is achieved, the law must have teeth to deal with such situations with a stern hand.

86. This Court, however, deems it apposite to clarify that by way of such observations and suggestions, it does not wish to find faults either on part of Legislature i.e. the Parliament or the Executive i.e. the concerned Ministries or with the Appropriate Authorities under the Act. Even in the present case, as prima facie revealed from material on record, both the concerned Appropriate Authority as well as the police had carried out detailed and thorough investigation in the case and had thereafter filed chargesheet and supplementary chargesheet, and no malice or malafide can be attributed to either Appropriate Authority or police in carrying out the raid or the investigation. The irony, however, remains that due to lack of information, the Appropriate Authority was itself not aware of the mandate of Section 28 of the Act that it had to

file a complaint before the Court concerned to initiate the prosecution against the accused persons, but had given a sanction letter to the Investigating Officer to prosecute the accused in Court which was alien procedure to the Act.

87. Rather, this Court, with utmost caution, aims to point out certain ambiguities, grey areas and omissions in the legal framework which is otherwise meant to deal with the grave issues of female foeticide and illegal sex determination. A balance needs to be maintained between the 'judicial innovation' i.e. development of existing laws by adding to its jurisprudence, and 'judicial restraint' i.e. disposition to preserve and harmonise the existing legal framework.

IV. Backdrop of Reasons Necessitating Issuance of Guidelines Apropos the Act: Quest for Substantive Justice

88. There is need for bringing law and justice on the same page despite ambiguity in the Act to some extent. Needless to say, judging cannot be a mechanical process. Essentially, it is a human process which involves a judge to pursue journey or quest for justice. Since a judgment does not merely resolve disputes but has profound effect on lives of litigants, in case a judge is able to take judicial note of a procedural or legal lacunae in enforcement of a statute, the Court is duty bound to ensure that the same is brought to the notice of the stakeholders. Judicial opinions and outcomes serve many purposes including stating reasons for outcome of a case. Therefore, this Court deems it essential, being bound by its duty to the constitution and citizens of this country, to observe the following which are the road

blocks in achieving the object and aim of the PC&PNDT Act, necessitating issuance of guidelines mentioned in the succeeding paragraphs.

a. Need for Safe Womb for Female Foetus: Sex- Determination Tests directly related to Sex-Selective Abortions

89. The PC&PNDT Act regulates the conduct of pre-natal diagnostic procedures and expressly prohibits sex-selection. But, the business of sex-determination tests does not end at conducting tests to reveal the sex of the foetus, rather ends in sex-selective abortions in many cases, which is a major concern.

90. There can be no doubt that the PC&PNDT Act has had a positive impact to some extent in creating fear of conducting such tests. However, the need for a **safe womb for a female foetus** was another issue which was sought to be addressed by this Act. In this regard, when the Act was enacted by the legislature, the objective amongst other medical issues was also to curb and punish the practice of revealing sex, as the legislature was well aware of the fact that female foeticide was a common issue in most parts of the country.

91. The past sex-ratio population trend demonstrates a preference for male offsprings. The issue was of utmost importance to the extent that to supplement the measures for ensuring safety of a female child even before she was born and not killed on the basis of her gender, various governments had implemented many schemes in the past. And more recently, to encourage the education and well being of female child, the government has implemented schemes which include providing

incentives such as free education and a fixed sum of money deposit when a female child is born, so that she is not considered a burden and her parents do not worry about how to pay for her education or marriage.

92. However, attitudinal changes are essential to ensure safety of an unborn female. Despite various schemes being implemented by the governments, small families having poor economic status had always desired to have at least one male child. Since, families with poor economic situations have bare minimum resources for their own survival, they cannot afford having two or three children in the family. This became a major criteria for sex determination and in case of a female child, the same led to illicit abortions. The illegal sex-determination tests and thereafter, illegal abortions in itself became a mini industry.

93. Needless to say, the **dual violence** faced by a woman on the basis of her gender in itself is abhorrent. Earlier, a woman was pressurised by her family members to give birth only to a male child, however, in certain situations, women themselves wanted a male child considering the fact that once she was old, she would have a son to support her. Women also had insecurities in certain cases that in case they were not able to give birth to a male child, they would not be respected or valued by family members as well as the society. On the other hand, there are situations when a woman already has a female child as the first child in the family, and in those cases, women have to face serious mental pressure to undergo abortion if her second child is not a male child which leads to mental violence and physical health hazards. As such

abortions are being carried out against the law which are based on selective sex determination that this Act aims to curb.

94. Women who choose to have an abortion in such circumstances, or rather are forced to undergo abortion by family pressure, choose to have abortion at private clinics where they use **unsafe and unhygienic practices**. Poor and rural women lack access to safe and hygienic abortion services and there are instances that since they cannot get these done at government hospitals, either they adopt unsafe means at home or at unsafe private clinics.

95. **Sex-selective tests**, followed by **sex-selective abortion** are typically conducted during the later stages of the second trimester. This ordeal not only inflicts physical pain and trauma upon women, but also causes emotional turmoil. Women may feel pressured by their family and society to terminate the life of a female foetus, even if it goes against their own beliefs and conscience. The decision to end the life of the unborn child can have a profound emotional impact that can last for several months. Women may experience feelings of anxiety, fear, and grief that are difficult to articulate.

96. There are situations where a woman may choose to bear the discomfort of carrying a female foetus for a limited period, rather than subjecting herself and her unborn daughter to a lifetime of distress and anguish. The ethical and personal dilemmas involved for a woman can be intricate, particularly when they clash with societal norms and the collective beliefs of those around her. Consequently, women may find themselves grappling with complex decisions that involve navigating a challenging set of moral and social circumstances.

97. The offences under this Act, which are proposed to be curbed, give rise to **dual violence** i.e. against the unborn female child and against the mother by putting her into health danger by forcing them to undergo abortions. Needless to say, a woman will be forced to undergo an abortion in case she has a female child in her womb, only when an illegal sex-determination test is conducted.

98. Despite the fact that the existing Act does not expressly prohibit sex-selective abortions, it is widely considered that the fundamental rationale for enacting this legislation was to curb the evil of female foeticide which was premised upon the customary preference for male children, which can also inferred from the Statement of Object and Reasons of the Act. This premise is backed further by debates in Parliament during the presentation of the Bill which had later culminated into the present Act. The Act was designed with the assumption that if the gender of an unborn child is not known, there will be no incidents of female foetus abortions. It was understood, however, that abortions may still be done for sex-related reasons.

99. **This Court is aware of the profound conflict that plagues women who are torn between societal and familial pressure to bear sons and the emotional stress and moral uncertainty they experience for not bearing a male child**.

100. Furthermore, the **low rate of conviction** under the PC&PNDT Act poses a significant challenge, as it is incredibly arduous to prohibit pre-natal diagnosis of sex. Ultrasonography and other tests are now widely available in various forms, making it incredibly difficult to prove and prosecute violations of the present legislation. Lack of

awareness about the law and procedure has played a crucial role in the exploitation of difficulties in implementing the law in its current form and the complexity of the issue at hand.

101. **Sex-determination based abortion is a powerful method of perpetuating gender inequalities. The restriction of access to foetal sex information is directly related to the problem of misogyny**, which affects women of all socioeconomic backgrounds not only in this country but globally as well. **The purpose of controlling knowledge of sex or gender is to protect expectant women and their unborn child**. Despite the fact that sex-selective abortion may not be immediately apparent in the present act, its primary objective is to address this issue. **Given this history and context, it is imperative that the Act be implemented with greater care and utilised by those affected**.

CONCLUSION AND DIRECTIONS

102. Although our country has made considerable progress towards achieving gender equality, the preference for sex determination still exists. Despite efforts to eliminate this bias, it has been challenging to completely eradicate it. This statement is being made to emphasise the effectiveness of current legislation and the above observations made by this Court are intended to highlight the impact of existing laws and regulations on society. This Court's aim is to demonstrate how these laws have influenced people's behaviour in their day-to-day lives. Despite the progress made, there is still work to be done to ensure that

gender discrimination and sex-determination tests are eradicated completely.

103. Though the PC&PNDT Act was enacted in view of the declining child sex-ratio and related issues of women empowerment, the object behind the enactment of the Act has not been understood and applied in its true spirit. Despite the fact that this issue had been taken seriously by the Hon'ble Apex Court on past several occasions and repeated directions had been passed, shortcomings on the part of authorities in following the necessary procedure under the Act frequently arise before the Courts, as also apparent in the present case

104. In these circumstances, this Court, therefore, to ensure that the object of the Act in question is achieved, passes the following directions:

i. The contents of this judgment and the observations made herein-above be brought to the notice of the (i) Ministry of Law and Justice, Government of India, (ii) Ministry of Health and Family Welfare, Government of India, (iii) Department of Health and Family Welfare, Government of NCT of Delhi, (iv) Commissioner, Delhi Police and (v) Director (Academics), Delhi Judicial Academy.

ii. The contents of the PC&PNDT Act and Rules be brought to the notice of the District Appropriate Authorities, Investigation Officers, as well as Prosecutors regarding specific mandatory provisions of Section 28 of the Act and as to what procedure is to be adopted in ensuring the

complaint filed under the Act.

iii. Efforts be undertaken by the Central as well as State Government to ensure clarity among the Appropriate Authorities about their duties and powers for ensuring effective compliance of the mandate of PC&PNDT Act and better communication within the officials of the Authorities.

iv. Training and sensitization programmes can be organised for the officials who are concerned with the implementation of PC&PNDT Act.

v. At present, the details of the District Appropriate Authorities are not readily available or known to a common layman. It is also not clear as to whether such Appropriate Authorities have an office or a website where a complaint can be lodged or whether a person has to go to their office personally or not. In today's world of technology, it would be appropriate if online portals and websites are created for this purpose, if not yet done, to notify and inform the general public about the procedure, place and mechanism to lodge such a complaint.

vi. The constitution of Appropriate Authority, their contact details, including the E-mail Id and phone numbers, where a complaint can be made be also mentioned at specific conspicuous places in all the hospitals and clinics, where the facility for ultrasonography or other pre-natal diagnostic techniques are available or are being carried out, or any

other place deemed appropriate by the concerned authorities of Ministry of Health and Family Welfare and Ministry of Law and Justice to ensure that the common person is not misled to file a complaint with an inappropriate authority not competent to ensure action on a complaint.

vii. The Delhi High Court Legal Service Committee and the law colleges through their legal aid committees may also educate and inform the people about mandatory provision and the fact that in case a person wants to lodge a complaint for commission of offence under this Act, the complaint has to be lodged either with Appropriate Authority or a person authorised on behalf of Central and State Government as per mandate of Section 28 of the Act.

105. The concerned Ministries/Departments of Central Government and State Government will ensure that such steps are taken, as directed above and compliance is filed **within three months**.

106. This Court also makes it clear that this Court is not creating any new law or a 'judicial legislation' but is pointing out the ambiguities in the Act to the concerned authorities, for them to deal with it appropriately, since the very object of enactment of the present Act is being defeated in majority of cases due to lack of awareness to the people, to the police as well as to the concerned authorities under the Act.

107. As far as prayers of the petitioner are concerned, in view of aforesaid discussion, this Court holds that:

i. Cognizance taken by the learned Trial Court vide order dated 11.10.2019, in absence of any complaint filed by Appropriate Authority under Section 28 of the PC&PNDT Act, was bad in law, and thus, the order dated 11.10.2019 is set aside.

ii. However, no grounds for quashing of FIR are made out since registration of FIR upon a complaint lodged by Appropriate Authority or any person authorised on its behalf disclosing cognizable offence, conduct of investigation and filing of chargesheet is not barred under the PC&PNDT Act.

108. In this case, the complaint was filed by the Appropriate Authority under Section 23 of the Act on 02.09.2020 which is now listed for evidence of the complainant before the learned Trial Court before which the present FIR is also pending wherein cognizance has been taken *vide* order dated 11.10.2019 which is impugned before this Court. In view thereof, this Court is of the view that in order to bring the complaint to its logical end, negating the investigation carried out in this case, which was initiated on the original complaint lodged on behalf of the Appropriate Authority to the police, will be travesty of justice.

109. Therefore, this Court holds that the investigation carried out in this case was ‘assisted investigation’ at the request of Appropriate Authority, and since the complaint filed by Appropriate Authority is already pending before the learned Trial Court in a separate complaint

case, the police investigation in the present case be merged with the said complaint case. Petitioner will be at liberty to move an appropriate application before the learned Trial Court for clubbing of cases, as per law.

110. In case, at the end of the trial, the petitioner is convicted and sentenced for any offence under any provisions of this Act, the period for which the petitioner had remained in judicial custody pursuant to filing of present FIR will stand set off against the period of punishment awarded to him.

111. Accordingly, the present petition, along with pending application, stands disposed of in above terms.

112. A copy of this judgment be forwarded by the Registry to the learned Trial Court for information. A copy be also forwarded to (i) Ministry of Law and Justice, Government of India, (ii) Ministry of Health and Family Welfare, Government of India, (iii) Department of Health and Family Welfare, Government of NCT of Delhi, (iv) Commissioner of Police, Delhi, and (v) Director (Academics), Delhi Judicial Academy, for information and compliance.

113. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 24, 2023/zp