

passed by the Additional Chief Judicial Magistrate Gwalior in Criminal Case No.5622/2009 dismissing the revision filed by the petitioner under Section 397 of the Cr.P.C. Vide the order of framing of charges, the learned ACJM has framed the charges against the petitioner for the offences punishable under Rule 18(X) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short the "PC and PNDT Rules") read with 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short the "PC and PNDT Act") and Sections 3(2) and 4 read with 5(3) of the Medical Termination of Pregnancy Act, 1971 (for short the "MTP Act").

2. The facts which are necessary for the disposal of the petition are given below:-

(2.1) The Chief Medical and Health Officer (for short the "CMHO") Gwalior filed a written complaint in the Court of Chief Judicial Magistrate Gwalior for the prosecution of the petitioner. In the complaint, it is stated that as per the Notification No.F10-83/2001/seventeen/MED-2 dated

04.04.2007 issued by the Department of Public Health and Family Welfare of the Government of Madhya Pradesh, the District Magistrate Gwalior is an Appropriate Authority under the territory of revenue district Gwalior as per the provisions of Section 17(2) of the PC and PNDT Act. It is also stated that vide the circular letter No.3/2008/1429 dated 09.07.2008 issued by the said department if any person who provides information regarding the sex selection of the foetus of any woman and termination of the pregnancy of female foetus shall be given a reward, the evidence collected thereof in the course of sting operation shall be acceptable and the statement of a woman, who has played a role of decoy witness, shall be admissible.

(2.2) It is also stated in the complaint that Sudhir Kumar Sharma and decoy witness/customer Jyoti Malik are the members of the Beti Bachao Samiti having its office at 123 Kharkhari Nahar Khaira Nagafgarh, New Delhi. They have

submitted a written report to the Appropriate Authority/District Magistrate Gwalior together with a compact disk (for short the "CD") of the sting operation and the affidavit of decoy witness Jyoti Malik stating that petitioner Dr. Smt. Sushma Trivedi runs a nursing home in the name and style of Trivedi Nursing Home at Nai Sadak, Lashkar, Gwalior. In the noon of 04.05.2009, decoy witness Jyoti Malik visited the petitioner's nursing home on the pretext of getting treatment of her abdominal pain. At that time, in the course of conversation she told the petitioner that her sister Smt. Soniya Malik has got two daughters. As per her sex selection report dated 02.04.2009, she has been carrying a female foetus of three months in her womb. She wants to get the foetus aborted being a female. The Petitioner agreed to do her abortion. Thereupon, she inquired from the petitioner regarding her charges. The petitioner told her that the approximate charges would be

Rs.4,000/- (four thousand). The petitioner took from her Rs.500/- (five hundred) as advance. On the sly, she (Jyoti Malik) recorded audio and video conversation which had been held between her and the petitioner.

(2.3) It is also stated in the complaint that having viewed the CD, it is decided that there is sufficient evidence for the prosecution of the petitioner. Later, the Appropriate Authority got the show-cause notice dated 07.05.2009 served upon the petitioner. Upon the request of the petitioner on 13.05.2009, she was shown the CD in the presence of the Advisory Committee. On the basis of the aforesaid facts, the petitioner committed the offences punishable under Rule 18(X) of the PC and PNDT Rules read with 23 of the PC and PNDT Act, Sections 3(2) and 4 read with 5 (3) of the MTP Act.

(2.4) It is also stated in the complaint that upon the authorization of the Appropriate Authority, the CMHO has filed this petition on behalf of the

said authority.

- (2.5) The complaint came to be registered as Criminal Case No.5622/2009 case title State of M.P. Vs. Smt. Sushma Trivedi. Later, the case is transferred to the Court of ACJM Gwalior.
- (2.6) At the stage of evidence before charge, the learned ACJM recorded the statements of Dr. Smt. Archana Singevkar (PW-1), who filed the complaint qua the CMHO, decoy witness Jyoti Malik (PW-2), Sudhir Kumar Sharma (PW-3), the de facto complainant.
- (2.7) On 12.04.2016, the learned ACJM heard arguments and the self same day passed an order in the order sheet of the case, whereby he has held that there is prima facie evidence against the petitioner for framing of the charges as noted in para 1 of this order and framed the charges against the petitioner. The petitioner pleaded not guilty to the charges.
- (2.8) Being aggrieved by the order of framing of the charges, the petitioner filed Criminal Revision

No.600210/2016 which was finally decided by the order dated 20.06.2016, whereby the order of framing of charges dated 12.04.2016 is affirmed dismissing the petitioner's revision. Again feeling aggrieved by the said order of the Revisional Court, the petitioner approached this Court by filing this petition.

3. Shri S.K. Shrivastava, learned counsel for the petitioner submitted that as per the provisions of Section 17(2) of the PC and PNDT Act, Akash Tripathi himself, the then District Magistrate Gwalior, had to file the complaint in the capacity of Appropriate Authority against the petitioner, but the complaint is undisputedly filed by the CMHO on his behalf. Thus, the complaint is not maintainable. Consequently, the cognizance taken upon the complaint is unsustainable in law and liable to be set aside. He further submitted that as per the evidence of decoy witness Jyoti Malik, her sister Smt. Soniya Malik, who is an imaginary woman according to the prosecution, had already undergone the test of sex selection of the foetus and the petitioner never met her personally. The prosecution has

not produced her test report on the sex selection. Therefore, the petitioner has not violated the provisions of Sub-rule (X) of Rule 18 of the PC and PNDR Rules. Consequently, no offence under Section 23 of the PC and PNDR Act is prima facie made out. He further submitted that as per the evidence on record, the petitioner had not carried out the abortion of Smt. Soniya Malik. Therefore, no offence against the petitioner is prima facie made out under Sections 3(2) and 4 read with 5(3) of the MTP Act. He further submitted that as per the evidence on record, the prosecution has not produced a certificate in respect of the CD of alleged sting operation as required under Section 65B(4) of the Evidence Act. Therefore, no cognizance can be taken on the basis of the CD against the petitioner. In support of the contention, reliance is placed by him on a decision of the Supreme Court reported in Anvar P.V. Vs. P.K. Basheer and others, (2014) 10 SCC 473. Thus, the learned ACJM has erred in framing the charges in the aforesaid Sections of law and the learned Revisional Judge has also committed the same error by affirming the order of framing of charges. Upon these submissions, learned

counsel for the petitioner prayed to allow the petition and to quash the charges as framed against the petitioner.

4. *Per contra*, learned counsel for the respondent/State submitted that vide the order dated 16.02.2016 passed in M.Cr.C. No.6178/2015 title Dr. Rajdeep Kapoor Vs. State of M.P., a co-ordinate Bench of the Madhya Pradesh High Court has held that upon the authorization of the Appropriate Authority, the CMHO, working under it, is a competent person to file complaint under the Act and such complaint is maintainable. After referring to the order dated 17.06.2009 of the Appropriate Authority Gwalior, he submitted that the CMHO Gwalior is authorized by it to launch the prosecution against the petitioner. Therefore, the contention of the learned counsel for the petitioner is untenable regarding the maintainability of the complaint. He further submitted that as per the evidence before charge, the petitioner got agreed to decoy witness Jyoti Malik for the abortion of female foetus of her sister Smt. Soniya Malik. Therefore, as per the language of Sub-rule (X) of Rule 18 of the PC and PNDDT Rules, the offence under Section 23 of the PC and PNDDT Act is made out. However,

he fairly conceded that as per the evidence before charge, the petitioner had not met Smt. Soniya Malik leave alone the carrying out her abortion. Therefore, the offences under Sections 3(2) and 4 read with 5(3) of the MTP Act is not made out.

5. I have considered the rival submissions made at the Bar and perused the orders passed by the Courts below, the material on record and evidence before charge.

6. First, the maintainability of the complaint shall be decided. In the case of Dr. Rajdeep Kapoor Vs. State of M.P. (supra), upon the authorization of the Appropriate Authority Bhopal, the CMHO Bhopal filed the complaint against petitioner Rajdeep Kapoor for his prosecution under the Penal Sections of the PC and PNDT Act. He challenged the maintainability of the complaint. A Co-ordinate Bench of this High Court took a view that the CMHO Bhopal may file complaint on behalf of the Appropriate Authority Bhopal placing reliance upon the order dated 03.08.2015 passed by the Supreme Court in SLP (Criminal) No.2226/2014. Thus, the complaint is maintainable. There is no reason to differ with the view taken by the learned Single Judge in

that case for the following three reasons:-

- (1) The aims and objects behind the enactment of PC and PNDT Act and Rules thereunder.
 - (2) The functions of an Appropriate Authority are given in Sub-section 4 of Section 17 of the PC and PNDT Act. In the present case, one of the functions mentioned in Clause (g) of Sub-section 4 is relevant which is that **“To supervise the implementation of the provisions of the Act and Rules”**. Thus, the role of the Appropriate Authority is mainly supervisory in its jurisdiction. Therefore, the Appropriate Authority may authorize a subordinate government official to file a complaint on its behalf under the PC and PNDT Act.
 - (3) As per the provisions of Section 28(1)(b) of the PC and PNDT Act even a person may file a complaint against a violator of the provisions of the Act subject to complying with the conditions mentioned in the Section itself.
7. Reverting to the present case, as per the material on

record at the relevant time, Shri Akash Tripathi was the District Magistrate-Cum-Appropriate Authority Gwalior. Vide the order dated 17.06.2009, he authorized the CMHO Gwalior by the name of post to file complaint on his behalf for the prosecution of the petitioner. Thereafter, Dr. Archana Singevkar (PW-1), the then CMHO, has filed the complaint against the petitioner.

8. On the basis of the discussion made in the aforesaid paras, I hold that the complaint is maintainable.

9. Violation of Sub-rule (X) of Rule 18 of the PC and PNDT Rules is punishable under Section 23 of the PC and PNDT Act. Said Sub-rule is reproduced below:-

“On no account conduct or allow/cause to be conducted female foeticide”.

The dictionary meanings of word “allow” is imperative to know for the proper and complete understanding of the aforesaid sub-rule. As per the Oxford Advanced learner's Dictionary of Current English (9th Edition), the meanings of allow is thus:- to let somebody to do something; to let something happen or be done; and to make something possible. As per the Merriam-Webster's Advanced

LEARNER'S English Dictionary, the meanings of the word allow are thus – to permit something; to regard or treat something as acceptable; to permit someone to have or to do something; and to make it possible for something to happen. Thus, in the sweep of said sub-rule, a person who agrees to conduct a female foeticide is also included in addition to a person who has allowed or caused to be conducted a female foeticide. In the present case, as per the contents of the complaint and evidence before charge, the petitioner got agreed to do abortion of female foetus of Smt. Soniya Malik upon the charges of Rs.4,000/- and she took Rs.5,00/- as advance. Thus, the petitioner has prima facie committed an offence punishable under Rule 18(X) of the PC and PNDT Rules read with Section 23 of the PC and PNDT Act. Consequently, I hold that the said charge is rightly framed against the petitioner.

10. Violation of the provisions of Section 3(2) and 4 of the MTP Act are made punishable under Section 5(3) of the said Act. A bare reading of Section 3(2) and 4 of the MTP Act would show that a medical practitioner would be punished under the said penal Section only when there is

reliable evidence that he/she had terminated a pregnancy violating the provisions thereof and mere agrees to do abortion is not an offence. In the present case, the petitioner had agreed to perform abortion of Smt. Soniya Malik, but she did not terminate her pregnancy. Therefore, no offences under Sections 3(2) and 4 read with 5(3) of the MTP Act are prima facie made out. Thus, I hold that the charge in the aforesaid Section is wrongly framed against the petitioner.

11. As to the submission of certificate in terms of Section 65B(4) of the Evidence Act in respect of the CD of the alleged sting operation, I hold that the case in the trial Court is at the stage of evidence after charge, therefore, the prosecution may produce the said certificate subject to permission of the learned trial Judge. Moreover, only on the basis of non-submission of the said certificate at the stage of evidence before charge, the charge framed against the petitioner cannot be quashed.

12. For the forgoing reasons and discussions, I partly allow this petition quashing the charges framed against the petitioner under Sections Section 3(2) and 4 read with 5(3)

of the MTP Act while maintaining the charge framed against the petitioner under Rule 18(X) of the PC and PNDT Rules read with Section 23 of the PC and PNDT Act.

13. With the passing of this final order, the interim order dated 02.09.2016, whereby the trial Court proceedings are stayed, shall stand vacated.

14. Before parting with this order, it is brought to the notice of the learned trial Judge that in the case of Voluntary Health Association Punjab Vs. Union of India and others, AIR 2013 SC 1571, the Supreme Court issued eleven directions in para 8 of the decision. Vide direction No.11, the Supreme Court has directed to the Courts to take steps to dispose of all pending cases under the PC and PNDT Act within a period of six months from the date of judgment. The record reveals that the complaint is filed against the petitioner in the case in the year 2009. Near about 8 years have already passed and the case is at the stage of evidence after charge. Therefore, the learned trial Judge is directed to make all-out endeavour to conclude the trial within a period of six months from the date of receipt of a copy of this order and no adjournments for the asking of

any party of the case shall be granted. The trial be conducted by strictly following the provisions of Section 309 Cr.P.C. The learned trial Judge is also directed to submit a report after the said period whether the trial is concluded and if the trial is not concluded the reasons therefor.

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**(Rajendra Mahajan)
Judge**