

**The High Court of Madhya Pradesh
MCRC 34370 of 2018
Dr. Usha Mishra vs. State of MP**

Gwalior, dt. 03/09/2019

Shri Himanshu Pandey, Counsel for the applicant.

Shri Vijay Sundaram, Panel Lawyer for the State.

Heard finally.

This application under Section 482 of Cr.P.C. has been filed for quashing the proceedings of Criminal Case No. 710 of 2014 pending before the Court of Chief Judicial Magistrate, Bhind for offence under Section 23 of Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [in short "the Act, 1994"].

The necessary facts for the disposal of the present application in short are that a Criminal Complaint has been filed by S.D.O. (Revenue), Bhind against the applicant and other co-accused persons on the allegations that on 14-3-2014, an inspection was carried out in the Sonography Centre of the applicant, which is being run in the name and style "Purna Multi-specialty Nursing Home", Gwalior Road, Bhind, and it was found that the Centre was being run in violation of the provisions of Act, 1994 and The Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (in short "Rules, 1996"). It was further alleged that by order dated 15-5-2014, S.D.O. (Revenue), Bhind has been appointed as OIC by District Magistrate, Bhind to file the complaint.

It is submitted that the Public Health and Family Welfare Department, by order dated 4-4-2007, have appointed the District Magistrates as Appropriate Authority and it was also mentioned that for the monitoring of the implementation of the provisions of Act, 1994, the Appropriate Authority may nominate any Executive Magistrate. It is submitted that in the light of the above mentioned order, the S.D.O. (Revenue) was appointed as OIC for filing the complaint before the Court of C.J.M., Bhind and accordingly, the complaint was filed. It is submitted that order dated 4-4-2007 was considered by a co-ordinate Court of this Court in the case of **Dr. Manvinder Singh Gill Vs. State of Madhya Pradesh** by order dated 4-7-2013 passed in **M.Cr.C. No. 4393 of 2013**, it was held, that the order dated 4-4-2007 does not authorize the nominated Executive Magistrate to file the complaint.

Per contra, it is submitted by the Counsel for the State that although the question of competency of S.D.O.(Revenue) to file the complaint has already been decided but, the Appropriate Authority may be granted liberty to file a fresh complaint.

Heard the learned Counsel for the parties.

So far as the competence of S.D.O (Revenue) to file the complaint under Section 23 of Act, 1994 is no more *res integra*. A Co-ordinate Bench of this Court in the case of **Dr. Manvinder Singh Gill (Supra)** has held as under :

"14. As per the discussion made herein above and looking to the notifications and the orders filed by the State Government, it is clear that the notification dated 4-4-2007 issued by the State Government declaring the District

Magistrate, Indore as appropriate authority for the purposes of District Magistrate is in consonance to the provisions contained under Section 17(3)(b) of the PC & PNDT Adhiniyam. The orders passed by the Collector, District Indore, nominating Smt. Renu Pant and Anand Sharma, Additional Collectors to help in monitoring on 12-4-2007 and 28-7-2010 are not the orders of appointment of appropriate authority or the officers authorized to maintain the compliant. As discussed herein above the appointment of appropriate authority or officer authorized shall be as per the provisions of the Adhiniyam by the Central or the State Government. The order of nomination passed by the District Magistrate cannot be termed the order of appointment of appropriate authority or the officers authorized for the purpose of Section 17(2)(3)(b) and for the purpose of Section 28(1)(a) of the PC & PNDT Adhiniyam. Thus, it is to be held that the aforesaid private complaints filed by Smt. Renu Pant and Shri Anand Sharma, Additional Collectors are not filed by the appropriate authority or the office authorized, therefore, the said complaint is not maintainable."

The facts of the case in hand are identical. Therefore, it is held that the complaint filed by S.D.O. (Revenue), under Section 28 of Act, 1994 cannot be said to be filed by the Appropriate Authority.

The next question for consideration is that what would be the consequence of filing of complaint by a person other than an Appropriate Authority.

Section 28 of Act, 1994 reads as under :

28. Cognizance of offences.—(1) No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or the State Government, as the case may be, or the Appropriate Authority; or

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

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

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

From the plain reading of Section 28 of the Act, 1994, it is clear that the Court can take cognizance of offence only on the complaint of Appropriate Authority or a person who has given notice of not less than 15 days to the Appropriate Authority, of alleged offence and of his intention to make a complaint to the Court. Thus, it is clear that the complaint can be filed either by Appropriate Authority or by a person who has given 15 days notice to the Appropriate Authority of alleged offence with an intention to make a complaint to the Court. Therefore, it is clear that in a given case, the complaint can be filed by a person, other than Appropriate Authority also.

The Act, 1994 is a special statute introduced with an object to prohibit the sex selection, before or after conception, and for regulation of pre-natal 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. Therefore, stringent provisions have been made and procedure has also been specified.

The Supreme Court in the case of **Voluntary Health Assn. of Punjab v. Union of India**, reported in **(2016) 10 SCC 265** has held as under :

"40. It needs no special emphasis that a female child is entitled to enjoy equal right that a male child is allowed to have. The constitutional identity of a female child cannot be mortgaged to any kind of social or other concept that has developed or is thought of. It does not allow any room for any kind of compromise. It only permits affirmative steps that are constitutionally postulated. Be it clearly stated that when rights are conferred by the Constitution, it has to be understood that such rights are recognised regard being had to their naturalness and universalism. No one, let it be repeated, no one, endows any right to a female child or, for that matter, to a woman. The question of any kind of condescension or patronisation does not arise.

41. When a female foetus is destroyed through artificial means which is legally impermissible, the dignity of life of a woman to be born is extinguished. It corrodes the human values. The legislature has brought a complete code and it subserves the constitutional purpose. We may briefly refer to the scheme of the Act and the Rules framed thereunder:

41.1. Section 2 of the Act is the dictionary clause and it defines "foetus", "Genetic Counselling Centre", "Genetic Clinic", "Genetic Laboratory", "prenatal diagnostic procedures", "prenatal diagnostic techniques", "prenatal diagnostic tests", "sex selection", "sonologist or imaging specialist".

41.2. Section 3 provides for Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics. Section 3-A imposes prohibition of sex selection. Section 3-B prohibits the sale of ultrasound machine, etc., to persons, laboratories, clinics, etc., not registered under the Act.

41.3. Section 4 regulates prenatal diagnostic techniques.

41.4. Section 5 stipulates written consent of pregnant woman and prohibition of communicating the sex of foetus.

41.5. Section 6 prohibits determination of sex. Chapter IV

of the Act deals with the Central Supervisory Board.

41.6. Sections 7 to 16-A deal with the constitution of the Board, meetings of the Board, functions of the Board, which includes reviewing and monitoring implementation of the Act and the Rules made thereunder. Section 16-A commands the States and Union Territories to have a Board to be known as the State Supervisory Board or the Union Territory Supervisory Board, as the case may be, to carry out the functions enumerated therein. Chapter V provides for the appropriate authority and Advisory Committee.

41.7. Sub-section (4) of Section 17 deals with the powers of the appropriate authority. The said provision being significant is extracted hereunder:

“**17. (4)** the appropriate authority shall have the following functions, namely—

(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;

(b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;

(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;

(d) to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;

(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;

(f) to create public awareness against the practice of sex selection or prenatal determination of sex;

(g) to supervise the implementation of the provisions of the Act and Rules;

(h) to recommend to the Board and State Boards modifications required in the Rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.”

41.8. Section 17-A enumerates the powers of the appropriate authorities. The said provision reads as

follows:

“17-A. Powers of appropriate authorities.—The appropriate authority shall have the powers in respect of the following matters, namely—

(a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the Rules made thereunder;

(b) production of any document or material object relating to clause (a);

(c) issuing search warrant for any place suspected to be indulging in sex selection techniques or prenatal sex determination; and

(d) any other matter which may be prescribed.”

41.9. Section 18 deals with the registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics.

41.10. Sections 19 and 20 provide for certificate of registration and cancellation or suspension of registration. Chapter VII deals with offences and penalties.

41.11. Section 22 stipulates prohibition of advertisement relating to pre-conception and prenatal determination of sex and punishment for contravention and Section 23 deals with offences and penalties.

41.12. Section 24 which has been brought into the Act by way of an amendment with effect from 14-2-2003 states with regard to presumption in the case of conduct of prenatal diagnostic techniques.

41.13. Section 26 provides for offences by companies.

41.14. Section 28 provides that no court shall take cognizance of an offence under the Act except on a complaint made by 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 a person who has given notice of not less than fifteen days in the manner prescribed.

41.15. Section 29 occurring in Chapter VIII which deals with miscellaneous matters provides for maintenance of records.

41.16. Section 30 empowers the appropriate authority in respect of search and seizure of records. The rule framed under Section 32 of the Act is not comprehensive. Various forms have been provided to meet the requirement by the Rules.

42. On a perusal of the Rules and the forms, it is clear as crystal that attention has been given to every detail.

43. Having stated about the scheme of the Act and the purpose of the various provisions and also the Rules framed under the Act, the dropping of sex ratio still remains a social affliction and a disease.

44. Keeping in view the deliberations made from time to time and regard being had to the purpose of the Act and the far-reaching impact of the problem, we think it appropriate to issue the following directions in addition to the directions issued in the earlier order:

44.1. All the States and the Union Territories in India shall maintain a centralised database of civil registration records from all registration units so that information can be made available from the website regarding the number of boys and girls being born.

44.2. The information that shall be displayed on the website shall contain the birth information for each district, municipality, corporation or gram panchayat so that a visual comparison of boys and girls born can be immediately seen.

44.3. The statutory authorities, if not constituted as envisaged under the Act shall be constituted forthwith and the competent authorities shall take steps for the reconstitution of the statutory bodies so that they can become immediately functional after expiry of the term. That apart, they shall meet regularly so that the provisions of the Act can be implemented in reality and the effectiveness of the legislation is felt and realised in the society.

44.4. The provisions contained in Sections 22 and 23 shall be strictly adhered to. Section 23(2) shall be duly complied with and it shall be reported by the authorities so that the State Medical Council takes necessary action after the intimation is given under the said provision. The appropriate authorities who have been appointed under Sections 17(1) and 17(2) shall be imparted periodical training to carry out the functions as required under various provisions of the Act.

44.5. If there has been violation of any of the provisions of the Act or the Rules, proper action has to be taken by the authorities under the Act so that the legally inapposite acts are immediately curbed.

44.6. The courts which deal with the complaints under the Act shall be fast tracked and the High Courts concerned shall issue appropriate directions in that regard.

44.7. The judicial officers who are to deal with these cases under the Act shall be periodically imparted training in the judicial academies or training institutes, as the case may be, so that they can be sensitive and develop the requisite sensitivity as projected in the objects and reasons of the Act and its various provisions and in view of the need of the society.

44.8. The Director of Prosecution or, if the said post is not there, the Legal Remembrancer or the Law Secretary shall take stock of things with regard to the lodging of prosecution so that the purpose of the Act is subserved.

44.9. The courts that deal with the complaints under the Act shall deal with the matters in promptitude and submit the quarterly report to the High Courts through the Sessions and District Judge concerned.

44.10. The learned Chief Justices of each of the High Courts in the country are requested to constitute a committee of three Judges that can periodically oversee the progress of the cases.

44.11. The awareness campaigns with regard to the provisions of the Act as well as the social awareness shall be undertaken as per Direction 9.8 in the order dated 4-3-2013 passed in *Voluntary Health Assn. of Punjab*.

44.12. The State Legal Services Authorities of the States shall give emphasis on this campaign during the spread of legal aid and involve the para-legal volunteers.

44.13. The Union of India and the States shall see to it that appropriate directions are issued to the authorities of All-India Radio and Doordarshan functioning in various States to give wide publicity pertaining to the saving of the girl child and the grave dangers the society shall face because of female foeticide.

44.14. All the appropriate authorities including the States and districts notified under the Act shall submit quarterly progress report to the Government of India through the State Government and maintain Form H for keeping the information of all registrations readily available as per sub-rule (6) of Rule 18-A of the Rules.

44.15. The States and Union Territories shall implement the Pre-Conception and Pre-Natal Diagnostic Techniques

(Prohibition of Sex Selection) (Six Months Training) Rules, 2014 forthwith considering that the training provided therein is imperative for realising the objects and purpose of this Act.

44.16. As the Union of India and some States framed incentive schemes for the girl child, the States that have not framed such schemes, may introduce such schemes."

Thus, it can be safely said that the Act, 1994 is not only a special enactment, but it has been promulgated for prohibiting the sex selection and to stop female foeticide. Therefore, the Act, 1994 is for the benefit of mankind and thus, the interpretation should be purposive.

The Supreme Court in the case of **M.M.T.C. Ltd. Vs. Medchl Chemicals and Pharma (P) Ltd.**, reported in **(2002) 1 SCC 234** has held as under :

"11. This Court has, as far back as, in the case of *Vishwa Mitter v. O.P. Poddar* held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case, the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criteria is satisfied as the complaint is in the name and on behalf of the appellant Company.

12. In the case of *Associated Cement Co. Ltd. v. Keshvanand* it has been held by this Court that the complainant has to be a corporeal person who is capable of

making a physical appearance in the court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground."

If a purposive interpretation is given to Section 28 of Act, 1994, then it is clear that not only an Appropriate Authority is competent to file the complaint, but any person who fulfils the requirement of Section 28(1)(b) of the Act, 1994, can also file the complaint. Thus, anybody can set the criminal law in motion. Therefore, it is clear that where the complaint is filed by an authority under the nomination of Appropriate Authority, and if the nomination cannot be said to be an order of appointment of complainant as Appropriate Authority, then this Court is of the view that the mistake of filing complaint by a non-competent person, cannot be said to be an illegality, but at the most, it can be said to be an irregularity.

At this stage, it is submitted by the Counsel for the applicant, that the proposition of law laid down by the Supreme Court in the case of **M.M.T.C. Ltd (Supra)** would not apply, because Section 28 of the Act, 1994 prohibits the Court from taking cognizance in absence of complaint by an Appropriate Authority, and therefore, the entire proceedings drawn by the Court, would be a nullity which cannot be rectified by sending a proper person as a complainant at the later stage.

Considered the submissions made by the Counsel for the applicant.

The Supreme Court in the case of **M.M.T.C. Ltd (Supra)** was dealing with a complaint filed by a person who was not duly authorized by the Company. Section 142 of Negotiable Instruments Act, reads as under :

"142. Cognizance of offences.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

“Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.”

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder

in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

Thus, it is clear that for offence under Section 138 of Negotiable Instruments Act, the Court cannot take cognizance except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. The Supreme Court in the case of **M.M.T.C. Ltd (Supra)** has held that if the complaint is filed by a person, who is not authorized by the Company, then it is merely an irregularity and can be corrected by the Company at a later stage by sending the correct/authorized person.

In the case in hand, the situation is more or less similar. The complaint under Section 28 of Act, 1994 can be filed either by Appropriate Authority or by a person who fulfills the requirement of Section 28 (1)(b) of Act, 1994. Thus, it can be said that any body can set the criminal law in motion subject to fulfillment of certain conditions. Therefore, this Court is of the considered opinion, that in case if the complaint is filed by a person, who is not properly authorized under the Act, 1994, then it is merely an irregularity, which would not result in dismissal of the complaint. On the contrary, the Appropriate Authority may join the complaint at any stage. Thus, this Court is of the considered opinion, that although the complaint filed by S.D.O. (Revenue) cannot be said to be filed by an Appropriate Authority, but the said defect would not result in dismissal of complaint, but the Appropriate Authority can join the complaint at a later stage.

The Complaint was filed in the year 2014 and the present application for quashment was filed on 23-8-2018, i.e., after 4 years of institution of complaint. An interim order of stay was passed on 1-2-2019 i.e., after near about 5 years of institution of complaint. However, the applicant has not disclosed the stage of complaint in the application. As per the information available on web site, the charges were framed in the year 2017 and the case is being listed for prosecution evidence after framing of charges. Thus, it appears that the Trial must have reached to an advance stage. The applicant has also approached this Court after a considerable long time without any explanation of delay. Under these circumstances, it would not be in the interest of justice to

quash the proceedings on the basis of an irregularity. Therefore, it is held that although the S.D.O. (Revenue) is not competent to file the complaint under Section 28 of the Act, 1994, but the said irregularity can be rectified by the Appropriate Authority by joining the complaint. Therefore, liberty is granted to the District Magistrate, Bhind to join the complaint as a complainant and S.D.O. (Revenue) can appear as a witness.

With aforesaid observations, the application is **finally disposed of**.

The interim order dated 13-2-2019 passed by this Court is hereby vacated.

The Trial Court is directed to conclude the Trial within a period of **6 months** from the date of receipt of the Copy of this Order. The Registry is directed to send the copy immediately.

The District Magistrate, Bhind is also directed to move an application for substituting him as the complainant. The said application be moved within a period of one month from today. The Public Prosecutor is directed to inform the District Magistrate, Bhind. Let a copy of this order be also sent to the District Magistrate Bhind for necessary compliance.

(G. S. Ahluwalia)
Judge