

**HIGH COURT OF MADHYA PRADESH, JABALPUR**

**BENCH INDORE**

**( Single Bench )**

**( Hon'ble Shri Justice Jarat Kumar Jain )**

**Misc. Criminal Case No.6027 of 2013**

Dr Raju Premchandani s/o Shyamlal Premchandani and another

**V E R S U S**

State of Madhya Pradesh through the Appropriate Authority Pre-  
Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex  
Selection) Act, 1994

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Shri Piyush Mathur, learned Senior Counsel with Smt.  
Sudha Shrivastava, learned counsel for the applicants.

Smt. Mamta Shandilya, learned Deputy Govt. Advocate for  
the Non-applicant/State.

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**O R D E R**

( Passed on this 1st day of September, 2015 )

**THIS** application under Section 482 of the Code of Criminal Procedure [for short “the Code”] is filed for quashing the complaint and order dated 05.09.2011 taking cognizance by the CJM, Indore against the applicants for the offences punishable under Sections 23 and 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [for short “the Act of 1994”]

[2] Brief facts of this case are that the Non-applicant/complainant filed a complaint stating that the applicants are the partners of firm “Ideal Medical Centre, Indore” and the partnership firm is running the ultra sound clinic and a license under Section 25 of the Act of 1994 has been granted to the firm. On 11.06.2011 a team of officers inspected the

clinic and found that the applicants were not maintaining the records as prescribed under the Act of 1994. The said complaint was filed by Satish Joshi, Nodal Officer who has been authorized to file the complaint by Additional Collector vide order dated 24.08.2011. On the basis of the said complaint, CJM, Indore vide order dated 05.09.2011 took cognizance of the offence under Sections 23 and 25 of the Act of 1994 against the applicants. The grievance of the applicants is that Satish Joshi is not Appropriate Authority or officer authorized by the Appropriate Authority. Therefore, the order of taking cognizance dated 05.09.2011 by learned CJM is without jurisdiction. Therefore, in this application prayer is made for quashing the entire complaint and in consequence Criminal Case No.16932/2011 pending in the Court of CJM, Indore.

[3] Learned Senior Counsel for the applicants submits Section 28 of the Act of 1994 provides that no Court shall take cognizance of an offence under this Act of 1994, except upon a complaint in writing made by the Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or State Government or by the Appropriate Authority. As per Notification District Magistrate is notified as Appropriate Authority; whereas in the present case Satish Joshi presented the complaint before the CJM, Indore who was authorized by the Additional Collector. The Additional Collector is not an Appropriate Authority. As per the scheme the Appropriate Authority has to sign the complaint and present the same before the Court.

But in the present case District Magistrate himself personally has not made the complaint before the CJM, Indore. Hon'ble Supreme Court in the case of **National Small Industries Corporation Limited** v/s **State (NCT of Delhi)** [(2009) 1 SCC 407] held that physical presence of the complainant is necessary and if the complainant is a public servant, he is exempted from examination under Section 200 of the Code.

[4] Learned Senior Counsel further submits that this Court in Misc. Criminal Case No.4393 of 2013 [**Dr. Manvinder Singh Gill** v/s **State of Madhya Pradesh**] decided on 04.07.2013 held that the nominee of the District Magistrate cannot be treated as officer authorized by the Appropriate Authority and such officer is not competent to initiate action under the Act of 1994. Hon'ble Supreme Court in Special Leave to Appeal (Cri.) No.2226 of 2014 has affirmed the said order. Thus, the order of taking cognizance in the present case is not as per the scheme of the Act of 1994. Therefore, the order of cognizance is without jurisdiction and is bad-in-law. Therefore, it be set-aside.

[5] Per contra, learned Deputy Govt. Advocate submits that the District Magistrate - Raghvendra Kumar Singh, who is an Appropriate Authority, has filed the complaint under his signature and Satish Joshi, Nodal Officer has only authorized to present the same before the CJM. It is not requirement of law that the public servant acting or purporting to act in discharge of his official duties should made the complaint personally before the Magistrate. Thus, there is no force in the argument of learned Senior

Counsel for the applicants. The CJM has rightly taken the cognizance.

[6] After hearing learned counsel for the parties, perused the record.

[7] From bare perusal of the complaint, it is clear that the complaint is filed by Appropriate Authority as shown in the cause-title and in para 1 of the complaint, it is mentioned that Raghvendra Kumar Singh, District Magistrate, Appropriate Authority is a complainant. Before this Court, D. K. Nagendra, Joint Collector has filed the affidavit to the effect that Raghvendra Kumar Singh, District Magistrate himself has signed the complaint. Thus, there is no force in the argument of learned Senior Counsel that the Appropriate Authority under his signature has not filed the complaint.

[8] Now I have to consider that if a public servant acting or purporting to act in discharge of his official duties made the complaint, then is it necessary that such public servant should have present the complaint personally before the Magistrate ? In clause (a) of first proviso of Section 200 of the Code, the words “has made the complaint” are used. In Section 28 of the Act of 1994 the same phraseology has been used “no Court shall take cognizance of an offence under this Act except on a complaint made by”. Whether “complaint made by” means a public servant should have personally made the complaint or it may be presented through post or by any messenger. For this purpose, I would like to refer the judgment of Nagpur High Court in the case of State Government v/s Rukhabsa Jinwarsa [AIR 1953

Nagpur 180] in which it is held that :-

**“There is no provision in the Code of Criminal Procedure requiring personal presentation of the complaint by the District Magistrate or his representative under Section 105, Factories Act. In our opinion, the requirements of law are satisfied when the complaint is forwarded by the District Magistrate and received in the court charged with the duty of trying the offence. Here the reader was acting on behalf of the Court in receiving the complaint. It was not necessary that the Magistrate should have personally received the papers.”**

[9] The above view was followed by the Patna High Court in the case of **State v/s Satnarain Bhuvania** [AIR 1960 Patna 514].

[10] Allahabad High Court in the case of **State v/s S.D.Gupta** [1973 Cri.L.J. 999 (All)] while dealing with the provisions of Factories Act, 1948 held that there is no provision in the Code of Criminal Procedure stating expressly or impliedly that the complaint must be presented to the Magistrate by the complainant personally. It cannot be held that a complaint sent by post is not valid and cannot be taken cognizance. Allahabad High Court has dealt with the provisions of Section 4 (1) (h) and Section 190 (1) (a) of the Code held as under :-

**“(13) Now, a complaint in writing sent to a Magistrate with a view to his taking action is very much a complaint within the meaning of Section 4 (1) (h) reproduced above. There is nothing in Section 4 (1) (h) which may even impliedly mean that the complaint must be made to the Magistrate personally.**

**(14) The next relevant section in the Code of Criminal Procedure is Section 190 (1) (a) which reads as follows :-**

**“Except as hereinafter provided, any Presidency Magistrate, District Magistrate, or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence---**

**(a) upon receiving a complaint of facts which constitute such offence :**

**(b) .....**

**(c) .....**

**It may be noticed that the words used in sub-clause (a), are “upon receiving a complaint”. The word “receiving” should include receiving by post. It will thus appear that there is nothing even in Section 190 which may lead to the conclusion that a complaint must necessarily be presented to the Magistrate by the complainant himself or through his counsel.”**

[11] With the aforesaid discussions, I am of the firm view that it is not the requirement of Code or the Act of 1994 that the Appropriate Authority should have personally present the complaint before the competent Magistrate.

[12] Now I have to consider the authority of apex Court which is relied upon by the learned Senior Counsel. In the case of National Small Industries Corporation Limited (supra), Hon'ble Supreme Court dealt with the provisions of clause (a) of first proviso to Section 200 of the Code held that a Government company is not a public servant but every employee of the company is a public servant and where the complainant is a public servant or court, the Code raises an implied statutory presumption that

the complaint has been made responsibly and *bona-fide* and not falsely or vexatiously. In such cases the exemption under clause (a) of first proviso to Section 200 of the Code will be available. But such exemption is not available to Government company if complaint is made in the name of the company represented by the employee. This is not the question involved in this case. Thus, this judgment is not helpful to the applicants.

[13] In the case of **Dr. Manvinder Singh Gill** (supra), nominee of the Appropriate Authority i.e. District Magistrate has made a complaint under the Act of 1994. Therefore, this Court held that the complaint is not made by Appropriate Authority. In the present case District Magistrate, who is Appropriate Authority, himself filed the complaint under his signature. Therefore, this precedent is also not helpful to the applicants.

[14] With the aforesaid, I am of the view that the District Magistrate, who is Appropriate Authority under the Act of 1994, has made the complaint and on the basis of complaint CJM has rightly taken the cognizance on 05.09.2011 against the applicants. Thus, there is no merit in this application. This application is hereby dismissed. A copy of this order along with the Trial Court's record be sent immediately to the Trial Court to decide the complaint according to law.

[ **JARAT KUMAR JAIN** ]  
**JUDGE**