

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.1442/2017

Dr. Dinesh Agrawal

Vs.

State of Madhya Pradesh

Ms. Sudha Shrivastava, learned counsel for the applicant.
Shri Pankaj Wadhvani, learned counsel for the respondent/State.

ORDER

(Passed on this day of May, 2017)

This application is filed under Section 482 of Cr.P.C. seeking quashment of complaint and order taking cognizance dated 04.03.2014 in Criminal Case No.211/2014 pending in the Court of learned Chief Judicial Magistrate, Barwani.

2. According to the applicant, he is running a Sonography shop center after taking permission of appropriate authority appointed under Pre-Conception and Pre-Natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 (hereinafter called 'PC & PNDT Act'). The respondent, then Medical and Health Officer filed a

complaint under the provisions of PC & PNDDT Act alleging that the petitioner is flouting the rules laid down in the Act by not maintaining the record. The complaint was filed by A.K. Mehta, Nodar Officer. By impugned order dated 04.03.2014, the Chief Judicial Magistrate, Barwani took cognizance of offence under Section 23 and 25 of PC & PNDDT Act and the applicant is presently facing trial before the Court

3. This application is filed on the ground *inter alia* that under Section 28 of the PC & PNDDT Act, cognizance can only be taken on a complaint filed by the appropriate authority. Said Shri A.K. Mehta was never appointed an authority under Section 17 of PC & PNDDT Act. Under Section 17(2)(3)(b), the District Magistrate is appointed as an appropriate authority by the State Government, and therefore, taking cognizance by the Chief Judicial Magistrate is bad in law.

4. In reply, the respondent submits that Shri A.K. Mehta was Chief Medical and Health Officer of District-Barwani. He was duly authorized by the appropriate authority District Collector. According to the respondents, under the provisions of Section 28(1)(a), the cognizance by the Magistrate can be taken on a complaint made by appropriate authority or any officer authorized by the appropriate authority. Shri A.K. Mehta was duly authorized, and therefore, there was no illegality in taking cognizance by the learned Magistrate

5. Before further averting on the merit of the case, it may be pointed out that the fact has come to the knowledge of the Court that applicant filed one application under the same provision of the law

challenging the taking of cognizance and competency of Tehsildar to inspect the premises of the applicant. This application was disposed of in M.Cr.C. No.6700/2014 by order dated 16.12.2014. In that application also in ground at serial No.13, the same ground was taken. The present applicant was granted liberty by the Court to raise this objection before the trial Court and without raising objection before the trial Court, the second application filed by the applicant, and therefore, this application is not maintainable. The petitioner also suppressed this fact from the Court.

6. So far as merit is concerned, learned counsel for the applicant placed reliance of judgment passed by co-ordinate Bench of this Court at Main Seat, Jabalpur in M.Cr.C. No.10264/2016 in case of ***Dr. Das Motwani Vs State of M.P.*** dated 30.01.2017. In this application itself, this Court considered the observation of Hon'ble the Apex Court made in SLP (Cri.) No.2226/2014, which was filed assailing the order passed in case of ***Manvinder Singh Gill (Dr.) Vs. State of M.P. ILR (214) M.P. 1176.*** The Hon'ble Apex Court observed that reading Section 28(1)(a) of the PC & PNDT Act carefully, it emerges that the authority to file complaint is vested in three officers namely the appropriate authority i.e. authority as notified in Section 17(3) of PC & PNDT Act apart from any officer authorized in that behalf either by the Central Government or by the State Government or the concerned appropriate authority itself.

7. In the present case, learned counsel for the applicant admitted

that by order dated 16.08.2013, Shri A.K. Mehta was authorized by the appropriate authority, the District Collector, Barwani to make a complaint before the competent Court and as such relying on the principle laid down by Hon'ble the Apex Court in SLP (Cri.) No.2226/2014, it is apparent that Shri A.K. Mehta had an authority to file the complaint and as such no case is made out for any interference on this ground also.

8. Accordingly, this application is not maintainable as an application was already filed and disposed of on merit, this application is accordingly dismissed.

9. Office is directed to register a contempt case against the applicant and issue a show cause notice to him for suppressing the fact that earlier an application is filed which was also disposed of on merit.

With observation and direction as aforesaid, the matter stands disposed of.

(Alok Verma)
Judge

Ravi