

A.F.R.

Court No. - 84

Case :- APPLICATION U/S 482 No. - 16027 of 2020

Applicant :- Dr. Anju Goswami

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ashutosh Sharma, Rajiv Lochan Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Ram Krishna Gautam, J.

1. This application under section 482 Cr.P.C. has been filed by Dr. Anju Goswami against State of U.P. and Dr. Devendra Agarwal, Additional Chief Medical Officer/ Nodal Officer, P.C.P.N.D.T., Mathura, with a prayer for quashing impugned summoning order dated 15.2.2020 as well as entire proceedings of Complaint Case No. 294 of 2020, titled as Dr. Devendra Agarwal Vs. Dr. Upendra Goswami and others, P.S. Kosikalan, District Mathura, pending in the court of C.J.M., Mathura.

2. Learned counsel for applicant argued that a complaint under section 28 of the P.C.P.N.D.T. Act was filed in the Court of C.J.M., Mathura, by Dr. Devendra Agarwal, Additional Chief Medical Officer/ Nodal Officer, P.C.P.N.D.T., Mathura, against Dr. Upendra Goswami, Dr. Anju Goswami and Karmveer @ Rajveer, for offences punishable u/s 3A, 4, 5, 6, 23 and 29 of the P.C.P.N.D.T. Act, P.S. Kosikalan, District Mathura, whereas entire accusation was said to be a raid conducted by Civil Surgeon, Palwal, Haryana, and his team, which was with no jurisdiction to make any such raid of Ultrasound Centre in Mathura, i.e. within the territory of State of U.P. Learned Presiding Judge failed to appreciate this fact that the contention made in the complaint was not of any constitution of offence, as above. The document filed with complaint was Ultrasonography of one Sushma, whereas it was said to be of one Kamla and the same was of one Sushma, whereas no

P.C.P.N.D.T. was made by the applicant. Offence against the applicant was not made out. In the like circumstance, in a proceeding u/s 482 Cr.P.C. No. 13522 of 2020 filed by Dr. Upendra Goswami, a coordinate Bench of this court has stayed the further proceedings of the case against Dr. Upendra Goswami till disposal of the application. The matter with regard to present criminal case regarding Dr. Upendra Goswami is pending before this court in above previously instituted proceeding u/s 482 Cr.P.C. and order of the Court has been annexed with the paper book. The notification issued by the State of Haryana constituting a committee of appropriate authority was with a specific mention that the jurisdiction is for the territory of State of Haryana and not for the State of U.P., whereas this complaint was filed by the Additional Chief Medical Officer/ Nodal Officer, P.C.P.N.D.T., Mathura, but no such raid was conducted by any appropriate authority authorised by the State of U.P. for conducting this raid at Mathura. The factual contention was not making out any offence against the applicant. The witnesses are pet witnesses, who have previously taken part in another proceeding of raid under P.C.P.N.D.T. Act. The Apex Court in ***PUCL Vs. Union of India, (1997) 1 SCC 301*** as well as in ***K.S. Puttaswamy Vs. Union of India, (2017) 10 SCC 1*** has propounded that if any procedure is prescribed and given then that is to be determined and allowing defiance of the same will dehorse the fundamental rights, in the administration of criminal law, the ends would justify the means would amount to declaring the Government authorities may violate any directions of the Supreme Court or mandatory statutory rules in order to secure evidence against the citizens. It would lead to manifest arbitrariness and would promote the scant regard to the procedure and fundamental rights of the citizens, and law laid down by the Apex Court. Accordingly, this case be heard on merits after obtaining reply from the State of U.P. along with

previously instituted application u/s 482 Cr.P.C. by Dr. Upendra Goswami. Meanwhile protection may be given to the applicant, as has been given in the case of Dr. Upendra Goswami.

3. Learned AGA vehemently opposed.

4. Having heard learned counsel for both sides and gone through the material placed on record, it is apparent that this complaint was filed by Dr. Devendra Agarwal, Additional Chief Medical Officer/ Nodal Officer, P.C.P.N.D.T., Mathura, against Dr. Upendra Goswami, Dr. Anju Goswami and Karmveer @ Rajveer, with specific contention that the complainant is an authorised authority under the P.C.P.N.D.T. Act for filing complaint, as above, and the complaint has been filed in exercise of above authority. It has specifically been stated in paragraph no. 6 of the complaint that while preparation of this raid was made by appropriate authority of Palwal, Haryana, an adjacent district to present place of occurrence, the Sub Divisional Magistrate, Mathura, Sri Krishnanand Tiwari was present as duty Magistrate before this raid and it has further been written in paragraph no. 16 of the complaint that this complainant had rushed at the above place of occurrence, after having information of such commission of offence under the P.C.P.N.D.T. Act, instantly and property along with Ultrasonography Machine, etc. were taken in custody. Meaning thereby the Magistrate of Mathura and this complainant were present at the time of occurrence at the spot. Hence territorial jurisdiction, being vehemently argued, is of no effect on above facts.

5. Moreso, this Court in exercise of inherent jurisdiction under Section 482 Cr.P.C. is not to embark upon factual matrix. Rather the same is to be seen by the trial court.

6. Saving of inherent power of High Court, as given under Section 482 Cr.P.C, provides that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court

to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Meaning thereby this inherent power is with High Court (I) to make such order as may be necessary to give effect to any other order under this Code (II) to prevent abuse of the process of any Court (III) or otherwise to secure the ends of justice. But Apex Court in **State of Andhra Pradesh v. Gaurishetty Mahesh, JT 2010 (6) SC 588: (2010) 6 SCALE 767: 2010 Cr. LJ 3844** has propounded that "*While exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable apprehension of it accusation would not be sustained. That is the function of the trial Judge/Court*". In another subsequent **Hamida v. Rashid, (2008) 1 SCC 474**, hon'ble Apex Court propounded that "*Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under Section 482 at an interlocutory stage which after filed with some oblique motive in order to circumvent the prescribed procedure, or to delay the trial which enable to win over the witness or may disinterested in giving evidence, ultimately resulting in miscarriage of Justice*". In again another subsequent **Monica Kumar v. State of Uttar Pradesh, (2008) 8 SCC 781**, the Apex Court has propounded "*Inherent jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.*" While interpreting this jurisdiction of High Court Apex Court in **Popular Muthiah v. State, Represented by Inspector of Police, (2006) 7 SCC 296** has propounded "*High Court can exercise jurisdiction suo motu in the interest of justice. It can do so while exercising other jurisdictions such as appellate or revisional*

jurisdiction. No formal application for invoking inherent jurisdiction is necessary. Inherent jurisdiction can be exercised in respect of substantive as well as procedural matters. It can as well be exercised in respect of incidental or supplemental power irrespective of nature of proceedings".

7. Regarding prevention of abuse of process of Court, Apex Court in ***Dhanlakshmi v. R. Prasana Kumar, (1990) Cr LJ 320 (DB): AIR 1990 SC 494*** has propounded "*To prevent abuse of the process of the Court, High Court in exercise of its inherent powers under section 482 could quash the proceedings but there would be justification for interference only when the complaint did not disclose any offence or was frivolous vexatious or oppressive*" as well as in ***State of Bihar v. Murad Ali Khan, (1989) Cr LJ 1005: AIR 1989 SC 1***, Apex Court propounded "*In exercising jurisdiction under Section 482 High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not*".

8. Meaning thereby, exercise of inherent jurisdiction under Section 482 Cr.P.C. is within the limits, propounded as above.

9. From the contention written in the complaint as well as in the summoning order, it is apparent that the above Hospital was registered in the names of Dr. Upendra Goswami and Dr. Anju Goswami, but the alleged offence was committed by Dr. Anju Goswami. Now the accusation is against the applicant Dr. Anju Goswami for making pre-natal determination of sex. Hence the interim relief granted in above mentioned Application u/s 482 Cr.P.C. in favour of Dr. Upendra Goswami is on different fact than the present applicant Dr. Anju Goswami.

10. The purpose for enactment of this Central Act of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 was that, in the recent past pre-natal diagnostic centers sprang up in the urban areas of the country

using pre-natal diagnostic techniques for determination of 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 become centres of female foeticide. Such abuse of the technique was against the female sex and affects the dignity and status of women. Various organizations working for the welfare and uplift to 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 and ultimately this enactment was passed as Act No. 57 of 1994 with an object The Preamble of the Act provides that "it is an Act to provide for the prohibition of sex selection, before or after conception and regulation of the use of pre-natal diagnostic techniques for the purpose 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." This Act was passed with above motion under National Policy for maintaining sex ratio and prohibiting misuse of diagnostic techniques for pre-natal sex determination, resulting female foeticide.

11. The complaint has been filed by the Additional Chief Medical Officer/ Nodal Officer, P.C.P.N.D.T., Mathura. The offence is committed inside chamber of a medical practitioner by misuse of diagnostic techniques and this raid was conducted by an appropriate authority authorised for the State of

Haryana, but the authorised officers of Mathura took part in this raid. A Magistrate along with complainant had participated in this proceedings.

12. Apex Court in ***Vishwa Mitter Vs. O.P. Poddar and others, 1983(20) ACC 367 (SC)*** has propounded that it is crystal clear that any one can set the criminal law in motion by filing a complaint before a Magistrate entitled to take cognizance under section 190 and unless any statutory provision prescribes any special qualification or eligibility criteria for putting the criminal law in motion, no Court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. Section 190 of the Code of Criminal Procedure clearly indicates that the qualification of the complainant to file a complaint is not relevant. But where any special statute prescribes offences and makes any special provision for taking cognizance of such offence under the Statute, the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute i.e. the complainant has to satisfy the Magistrate that he is with ability to file the complaint and in case in hand this ability has been given in the first paragraph of the complaint itself. The complainant is Additional Chief Medical Officer/ Nodal Officer, P.C.P.N.D.T., Mathura, duly authorised to file the complaint.

13. Hence, under all above facts and circumstances, there is no misuse or abuse of process of law. Accordingly, this application merits its dismissal.

14. **Dismissed** as such.

Order Date :- 5.11.2020

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