

HIGH COURT OF ALLAHABAD**BENCH: Subhash Vidyarthi J.****Date of Decision: March 22, 2024**

APPLICATION U/S 482 No. – 2998 of 2014

Applicant: Dr. Vinod Kumar Bassi**Versus****Opposite Party: The State Of U.P And Anr.****Legislation:**

Sections 3, 17, 23, 28 of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

Section 482 of the Criminal Procedure Code, 1973

Subject: Application for quashing order dated 03.06.2014 and proceedings in Case No. 4495 of 2011 alleging violation of Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.**Headnotes:**

Quashing of Proceedings – Incompetence of Complainant – Inadequate Authority of Additional Chief Medical Officer – Pre-Natal Diagnostic Techniques Act Violations – Court holds that the Additional Chief Medical Officer, who filed the complaint, was not the ‘appropriate authority’ as mandated under Section 28 of the Act of 1994. Observes that the complaint was therefore incompetent, rendering the trial court’s cognizance of the offences and summoning of the applicant legally unsustainable. [Paras 2, 6, 9, 11]

Jurisdictional Competence – Filing of Complaint under Pre-Natal Diagnostic Techniques Act – Analysis of Section 28 of the Act of 1994 – Emphasizes the Act’s stipulation that only complaints made by the appropriate authority, as defined and appointed under Section 17 of the Act, can be cognized by courts. Recognizes that the complaint by the Additional Chief Medical Officer fell outside this jurisdictional ambit. [Para 4, 5, 9]

Decision – Quashing of Order and Proceedings – The court allows the application, quashing the order dated 03.06.2014 and all proceedings of Case No. 4495 of 2011. The decision underscores the importance of strict adherence to statutory requirements for legal actions under specialized legislation like the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. [Para 10-11]

Representing Advocates:

For Applicant: Amrendra Singh, Ishan Baghel, Pankaj Bala, Veena Vijayan Rajes

For Opposite Party: Govt. Advocate, Ajay Krishna

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Ishan Baghel Advocate, the learned counsel for the applicant, Sri Anurag Verma, the learned AGA-I for the State and perused the record.
2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of an order dated 03.06.2014 as well as entire proceeding of Case No. 4495 of 2011, under Sections 3/23 Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Police Station Sandila, District Hardoi, pending in the court of learned Additional Chief Judicial Magistrate, Court No. 3, Hardoi.
3. The aforesaid complaint was filed by Additional Chief Medical Officer, Hardoi against the applicant and one Raj Kishore Awasthi, stating that he had been authorized by the District Magistrate/ Appropriate Authority to file the complaint under Section 28 of Preconception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (which will hereinafter be referred to as 'the Act of 1994'). The complaint alleges that the provisions of the aforesaid act were being violated in a diagnostic centre owned by the coaccused persons where the applicant was carrying out Ultra Sonographic Examination of patients.
4. Learned counsel for the applicant has submitted that Section 28 of the Act of 1994 provides as follows:-

"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 authorised 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 organisation.

(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 subsection (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.”*

5. The manner of appointment of ‘appropriate authority’ is provided in Section 17 (1) & (2) of the Act of 1994 as follows:-

“17. Appropriate Authority and Advisory Committee.—

1. *The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union Territories for the purposes of this Act.*

2. *The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.*

3. *The officers appointed as Appropriate Authorities under subsection (1) or sub-section (2) shall be,—*

- (a) *when appointed for the whole of the State or the Union Territory, consisting of the following three members—*

(i) *an officer of or above the rank of the Joint Director of Health and Family Welfare—Chairperson;*

(ii) *an eminent woman representing women's organisation; and*

(iii) *an officer of Law Department of the State or the Union Territory concerned:*

Provided that it shall be the duty of the State or the Union Territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:

Provided further that any vacancy occurring therein shall be filled within three months of the occurrence.]

(b) *when appointed for any part of the State or the Union Territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.*

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6. In exercise of the aforesaid provision, the State Government has issued a Notification dated 30.11.2007 providing that the District Magistrate shall be the Appropriate Authority under Section 17(3)(a) read with 17(3)(b) of the act of 1994. The submission of the learned counsel for the applicant is that as the Additional Chief Medical Officer is not the appropriate authority, he could not have filed a complaint for any alleged violation of the provisions of the aforesaid Act and the trial court could not have taken cognizance of the complaint which had not been filed by the appropriate authority.

7. Opposing the submissions, the learned AGA-I has submitted that the applicant has the opportunity to defend him before the trial court and since the complaint makes out commission of offences under the Act by the applicant, it is not a fit case where this Court should exercise its inherent powers for quashing the proceedings of the complaint.
8. I have heard the aforesaid facts and circumstances of the case and the submissions advanced by the learned counsel for the parties.
9. When the Act of 1994 clearly provides that no Court shall take cognizance of any offence under the Act except on a complaint made by the appropriate authority, the court has no jurisdiction to take cognizance of any offence except on a complaint made by the appropriate authority. There can be no dispute against the fact that the Additional Chief Medical Officer is not an appropriate authority and he has no authority to file a complaint for any alleged offence committed under the provisions of the aforesaid Act and the Government Order. Therefore, as the complaint itself was incompetent, the trial court had no jurisdiction to take cognizance of the offences alleged in the complaint and to summon the applicant for being tried for the alleged offences.
10. Accordingly, the application is ***allowed***.
11. The order dated 03.06.2014 as well as entire proceeding of Case No. 4495 of 2011, under Sections 3/23 Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Police Station Sandila, District Hardoi, pending in the court of learned Additional Chief Judicial Magistrate, Court No. 3, Hardoi, are hereby quashed.