

Before Arvind Singh Sangwan, J.

DR. ANIL BANSAL—*Petitioner*

versus

THE DISTRICT APPROPRIATE AUTHORITY, GURUGRAM—

Respondent

CRM-M No. 18417 of 2018

February 24, 2020

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994-Sections 3, 3A, 4, 5, 6, 17, 23, 29, 30 and Rl. 9 and 12—Code of Criminal Procedure, 1973- S. 482—Quashing of complaint and summoning order—Complaint filed by respondent against petitioner-a qualified radiologist and registered under registered under PC & PNDT Act – Trial court summoned him to face trial- Quashing filed- Allowed- Held- PNDT team not validly constituted as third member had not signed as per section 17-Order appointing team signed by Chairman only-Procedure stands vitiated as lapse on part of Appropriate Authority is incurable defect- Procedure u/ s 30 and rule 12 also not followed- Spot and seizure memos not supplied to the petitioner- Complaint filed by District Nodal Officer and not by District Appropriate Authority- Complaint and summoning order quashed.

Held that: (a) A perusal of letter dated 12.09.2016, constituting a PNDT Team by the Chairman, DAA-cum-Civil Surgeon, Jhajjar, clearly shows that it is signed by two members and not by the third member i.e. Member, DAA-cum-DPO(WCD), Jhajjar, therefore, it is not signed by a validly constituted District Appropriate Authority as per Section 17 of the PC & PNDT Act.

(b) Even a perusal of another order dated 12.09.2016, issued by Chairman, DAA-cum-Civil Surgeon, Gurugram, appointing a three member PNDT Team, shows that it was done under his sole signature and not by the other two members. This fact is not disputed in the reply/affidavit of the Deputy Civil Surgeon cum-PNDT Nodal Officer, Gurugram, therefore, in view of the judgment in Dr. Ritu Prabhakar's case (supra), the whole procedure stands vitiated as the lapse on the part of both the District Appropriate Authorities is an incurable defect.

(c) Further, as per procedure prescribed under Section 30 of the PC & PNDT Act read with Rule 12, it is mandatory to provide the copies of

spot and seizure memos, if prepared at the spot, to persons from whom the recovery is effected, however, a perusal of the impugned complaint as well as the reply filed in Court, nowhere shows that this procedure was followed and a copy of the list prepared by the team was ever supplied to petitioner, though in para 7 of the complaint, it is stated that spot and seizure memos were prepared at the spot but a copy thereof was never supplied to the petitioner. This also vitiates the procedure adopted by the complainant.

(d) As per provisions, the complaint is to be filed by the District Appropriate Authority, which consists of three members, whereas the impugned complaint has been filed by the District Nodal Officer. It is also held by the Court in Ishwar Singh Yadav's case (*supra*) that the District Appropriate Authority cannot delegate its powers, therefore, the procedure adopted by the District Appropriate Authority, Gurugram is totally illegal, which cannot be termed as an curable irregularity.

(e) Therefore, in view of the well settled principles of law, when chances of conviction of petitioner are bleak, no purpose will be served to allow continuation of his prosecution.

(Para 30)

Ashish Aggarwal, Sr. Advocate with
Kartik Gupta, Advocate
for the petitioner.

Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (oral)

(1) Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing of ***Complaint Case No. 133/2017***, dated 01.12.2017 (Annexure P-4), titled as '***District Appropriate Authority, Gurugram versus Smt. Usha & Another***', under Sections 3, 3A, 4, 5, 6, 29 and Rule 9, all punishable under Section 23 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (*for short 'PC & PNDT Act'*) along with all the subsequent proceedings arising therefrom including summoning order dated 04.12.2017 (Annexure P-5), passed by the trial Court, vide which the petitioner has been summoned to face trial.

(2) Brief facts of the case are that the petitioner is a doctor, aged about 62 years and is qualified to conduct ultrasound diagnostic techniques and he is registered under PC & PNDT Act. The petitioner possess the degree of M.D.(Med.) and he is running his own nursing

home for the last about 36 years. The petitioner is also a registered Radiologist.

(3) Learned senior counsel has submitted that in a complaint filed by the District Appropriate Authority, Gurugram through Deputy Civil Surgeon-cum-PNDT Nodal Officer, Gurugram against one Usha and the petitioner, the trial Court has summoned them to face the trial under Sections 3, 3A, 4, 5, 6, 29 read with Rule 9, all punishable under Section 23 of the PC & PNDT Act.

(4) The case set up in the impugned complaint is that on 12.09.2016, a team of Deputy Civil Surgeon-cum-PNDT Nodal Officer, Jhajjar along with three other medical officers was constituted by the Chairman, DAA-cum-Civil Surgeon, Jhajjar to investigate into a secret complaint received by him against a lady named Usha with the allegations that she is running an illegal racket of sex determination. Upon this, one Sheetal w/o Naveen was made to act as a decoy customer and one Kavita (Block Asha Co-ordinator, Community Health Centre Chhahra) was to act as a shadow witness. The said shadow witness and the decoy customer called Usha who set up a deal of sex determination with regard to pregnancy of decoy customer Sheetal for Rs. 30,000/- and thereafter, they came to Gurugram in a car. The Chairman, DAA, Gurugram was informed and was requested to conduct a raid, who constituted a team of three members i.e. Deputy Civil Surgeon-cum-PNDT Nodal Officer, Gurugram, Deputy Civil Surgeon, Gurugram and Secretary, Red Cross, Gurugram to join the team of health officials, Jhajjar. Thereafter, decoy customer was given an amount of Rs. 30,000/-, 14 notes of 1000 and 32 notes of 500, details of which were prepared separately and they came to the ultrasound centre of the petitioner. After 20 minutes, the decoy customer Sheetal came out of the said hospital and informed that ultrasound was performed by a male doctor (the petitioner) and she was told that she was carrying a baby girl. Thereafter, the team of both the districts along with decoy customer Sheetal and shadow witness Kavita entered into the said hospital and recovered Rs. 5,000/- from tout Usha and Rs. 25,000/- from petitioner Dr. Anil Bansal. It is further stated in the complaint that spot memo, seizure memo, seizure memo of the money recovered and other documents were prepared at the spot and finding that both the accused are indulged in the illegal activities, the present complaint was filed.

(5) Learned senior counsel has argued that term 'Appropriate Authority' as defined under Section 2(a) of the PC & PNDT Act means

an 'Appropriate Authority' appointed under Section 17 of the PC & PNDT Act, which reads as under:

“2. Definitions.- In this Act, unless the context otherwise requires,—

(a) “**Appropriate Authority**” means the Appropriate Authority appointed under section 17;

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 sub-section (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 organization; 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 multimember 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 that 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.

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;

5. The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

6. The Advisory Committee shall consist of— (a) three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists; (b) one legal expert; (c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be; (d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

7. No person who has been associated with the use or promotion of pre-natal diagnostic technique for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.

8. The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon:

Provided that the period intervening between any

two meetings shall not exceed the prescribed period.

9. The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed.”

(6) Learned senior counsel has further argued that as per Section 17, the State Government, by notification in the official gazette, can appoint one or more Appropriate Authority for the whole or part of the State and the Appropriate Authority, as per Sub Section 4 of Section 17, performs the various functions including investigation on a complaint regarding breach of provisions of PC & PNDDT Act. It is further provided that as per Section 6, the Advisory Committee shall consist of three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists and one legal expert and one officer to represent the department dealing with information and publicity of the State Government and three eminent social workers.

(7) Learned senior counsel has referred to notification dated 07.11.2013 (Annexure P-3), issued by the Health Department, Haryana Government, in exercise of powers conferred under Section (2) read with Clause (b) of Sub Section (3) of Section 17 of the PC & PNDDT Act, have appointed an Appropriate Authority for the District comprising of Civil Surgeon as Chairman, District Programme Office Women and Child Development Department and District Attorney as Members of the Authority.

(8) Learned senior counsel has further referred to the aforesaid notification, wherein with reference to District Gurugram, Dr. B. K. Rajora, is the Chairman, DAA, Gurugram being Civil Surgeon, Gurugram, Dharmender Rana, is the Member, DAA being the District Attorney, Gurugram and Sunita Sharma is also a Member, DAA, being the Programme Officer (WCD), Gurugram.

(9) Learned senior counsel further submitted that procedure to conduct search and seizure is laid down under Rule 12 of PC & PNDDT Rules, 1996 to be read with Section 30(2) of the PC & PNDDT Act lays down the power to search and seize the records etc. Rule 12 is reproduced below:

“12. Procedure for search and seizure.-

.....

(a) A list of any document, record, register, book, pamphlet, advertisement or any other material object found in the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre and seized shall be prepared in duplicate at the place of effecting the seizure. Both copies of such list shall be signed on every page by the Appropriate Authority or the officer authorized in this behalf and by the witnesses to the seizure:

Provided that the list may be prepared, in the presence of the witnesses, at a place other than the place of seizure if, for reasons to be recorded in writing, it is not practicable to make the list at the place of effecting the seizure.

(b) One copy of the list referred to in sub-rule (2) shall be handed over, under acknowledgement, to the person from whose custody the document, record, register, book, pamphlet, advertisement or any other material object have been seized:

Provided that a copy of the list of such document, record, register, book, pamphlet, advertisement or other material object seized may be delivered under acknowledgement, or sent by registered post to the owner or manager of the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre, if no person acknowledging custody of the document, record, register, book, pamphlet, advertisement or other material object seized is available at the place of effecting the seizure ”

(10) Learned senior counsel has, thus, argued that it is mandatory that only the 'Appropriate Authority' is authorized to conduct investigation into a complaint regarding breach of provisions of PC & PNDT Act.

(11) Learned senior counsel further submitted that under Section 28 of the PC & PNDT Act, cognizance of an offence can be taken by the 'Appropriate Authority' or by any other Officer authorized by State. Section 28 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 authorised in this behalf by the Central Government or 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.”

(12) Learned senior counsel has further argued that the complainant or the authorities, who have conducted the search and seizure under the provisions of Section 30, is not the Appropriate Authority.

(13) It is further argued that the Appropriate Authority, Jhajjar has no jurisdiction to take action in District Gurugram and only the Appropriate Authority, Gurugram has the jurisdiction to do so.

(14) Learned senior counsel further argued that even if it is to be taken for the sake of arguments that the Appropriate Authority, Jhajjar has the jurisdiction to act at Gurugram, the constitution of Appropriate Authority was not in accordance with the provisions of PC & PNDT Act as well as aforesaid notification.

(15) Learned senior counsel has referred to office order dated 12.09.2016 (Annexure P-6), a photocopy in vernacular of which is taken on record in Court as Mark 'A', shows that it is signed only by the Chairman, DAA-cum-Civil Surgeon, Jhajjar and Member, DAA-cum-District Attorney, Jhajjar, whereas the Member, DAA-cum-DPO(WCD), Jhajjar has not signed the same and, therefore, the constitution of the Appropriate Authority itself was not as per the provisions of the PC & PNDT Act.

(16) Learned senior counsel has further argued that even the aforesaid office order dated 12.09.2016, issued under the signature of District Appropriate Authority-cum-Civil Surgeon, Gurugram, appointing three members team, is without complete coram of Appropriate Authority, Gurugram as the Civil Surgeon alone is not competent to constitute a team of three members.

(17) Learned senior counsel has referred to para 18 of the present petition, wherein a specific plea has been taken by the petitioner that the constitution of Appropriate Authority of Jhajjar and Gurugram was not in accordance with the provisions of PC & PNDT Act and in the reply, filed by way of affidavit of Deputy Civil Surgeon-cum-PNDT Nodal Officer, Gurugram, this fact is not disputed, rather it is stated that due to urgency, Chairman, District Appropriate Authority, Jhajjar has formed the team.

(18) Learned senior counsel has next argued that even no proper procedure was followed while conducting the search and seizure and has referred to impugned complaint, wherein, in para 7, it is stated that PNDT Team prepared a 'spot memo' and 'seizure memo', vide which Ultrasound machine and PNDT register, Form 'F' etc. were taken into possession along with Rs. 25,000/- allegedly recovered from the petitioner and Rs. 5,000/- from tout Usha, however, without following the procedure prescribed under Rule 12 read with Section 30 of the PC & PNDT Act, the search and seizure were effected.

(19) Learned senior counsel has referred to aforesaid Rule 12, wherein it is specifically provided that list may be prepared in the presence of a witness at the place of occurrence and under Rule 12(3), copy of such list should be handed over to the person from whose custody, the record register, book etc. have been seized. It is further argued that though it is mentioned in complaint that the spot memo and seizure memo were prepared at the spot, however, nothing is mentioned in the complaint that a copy thereof was ever served on the petitioner.

(20) Learned senior counsel has next argued that as per the allegations in the complaint, it is stated that decoy customer, after 20 minutes, came out of the clinic and informed that a male doctor has performed her ultrasound and thereafter, when the team went inside the clinic, they recovered Rs. 5,000/- from tout Usha and Rs. 25,000/- from petitioner Dr. Anil Bansal, whereas no procedure for identifying the currency notes, so recovered, was followed, therefore, the strict provisions of PC & PNDT Act have not been complied with.

(21) Learned senior counsel further argued that it is well settled principle of law under the PC & PNDT Act that the authorities can neither authorize nor delegate their power to others for of filing the complaint before the Court and it is mandatory that the complaint should be filed by the District Appropriate Authority under the signature of the three members committee, whereas the present

complaint has been filed through the Nodal Officer and the same is not maintainable, hence, the authorization letter dated 29.11.2017 (Annexure P-9), delegating the power to the Nodal Officer by the District Appropriate Authority, is patently illegal.

(22) Learned senior counsel has relied upon the judgment of this Court rendered in *CRM-M-21764-2015*, titled as *Dr. Ritu Prabhakar and another* versus *State of Haryana and another*, decided on 03.06.2016, wherein the following observations were made:

“31. Another important aspect of the matter is that the complaint filed against the petitioners has not been validly instituted. The paragraph 1 of the complaint gives the constitution of an appropriate authority for the district consisting of three officials i.e. Chairman and two other members; but a perusal of the complaint clearly reveals that the same has been signed only by the Chairperson and there is nothing on record to prove that rest of the two members of the appropriate authority have either signed or authorized the chairperson for filing the complaint against the petitioners. The provisions of Section 28 of the PC & PC & PNDT Act contemplates that no Court shall take cognizance of an offence under this Act except on the complaint made by the appropriate authority concerned, or any Officer authorized in this behalf by the Central Government or State Government and the relevant part of Section 28 of the Act reads as under:-

(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 Central Government or 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.”

Admittedly in the present case, the State Government while issuing notification dated 7th November 2013, Annexure P-15 has constituted the Appropriate Authority for the district consisting of the following officers namely:-

- “i) Civil Surgeon Chairperson
- ii) District Programme Member Officer Women and Child Development Department.
- iii) District Attorney Member”

In the case in hand, the complaint was signed only by the Civil Surgeon claiming to be the chairperson of the Appropriate Authority and in this regard a Specific ground is taken under para 6(L) of the petition as well as during the course of arguments also a plea was raised on behalf of the petitioners before this Court to the effect that the complaint is not maintainable in view of the fact that the same is not validly instituted due to the lack of authorization and signatures by other two members of the Appropriate Authority.

Even in the reply filed on behalf of the respondents also, the averment made in para 6(L) of the petition are not denied, rather the same are admitted in following terms:-

“In reply to part L of para 6 of the petition, it is further submitted that the civil surgeon is part and parcel of D.A.A. And has acted upon the opinion as advise of the DAA which makes him competent as well as authorized person to file the complaint and for proceedings thereof.”

Thus, neither in the complaint nor in the reply filed by the respondents or during the course of arguments it has been brought to the notice of this Court that there is any authorization to file the present complaint against the petitioners in consonance with the provisions of Section 28 of the PC & PNDT Act. Consequently, on the point whether the complaint against the petitioners is validly instituted or not, this Court comes to the firm conclusion that the complaint is signed and filed only by Dr. Inderjit Dhankar, Chairperson claiming himself to be District Appropriate Authority (PNDT)-cum-Civil Surgeon, Panipat and other two members have not signed the same and thus the same is not validly instituted in consonance with the Section 28 of the PC & PNDT Act. As a result, it is held that the complaint is not instituted in the manner provided under Section 28 of the PC & PNDT Act and consequently the entire proceedings are vitiated being illegal in law.

However, this issue has not been examined by both the learned Courts below in its true prospect and, as such the same has resulted into a grave miscarriage of justice.

32. The arguments on behalf of the respondents that the prosecution of the petitioners is squarely covered within the parameters of the PC & PNDT Act in view of the Central Government letter dated 09.10.2014 (Annexure P-11) is not sustainable in view of the fact that counsel for the respondents has miserably failed to point out as to under which provision of the PC & PNDT Act it has been provided that it was obligatory upon the petitioners to get their clinic separately registered for the purpose of IVF facilities merely on issuance of the guidelines by the Central Government dated 9th October, 2014 (Annexure P-11). Even otherwise, if the matter is to be examined from the angle whether these guidelines have any force of law or can be construed as part of the PC & PNDT Act or not, then the provisions of Section 31-A of the PC & PNDT Act being relevant can be pressed into service and the same reads as under:-

“31-A. Removal of difficulties. (1) If any difficulty arises in giving effect to the provisions of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the said Act as appear to it to be necessary or expedient for removing the difficulty.

Provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.”

A perusal of Section 31-A reproduced hereinabove, clearly reveals that no order shall be made under this Section by the Central Government after expiry of the period of three years

from the date of commencement of amendment Act, of 2002 (14 of 2003) i.e. 14.02.2003. Undisputedly the guidelines dated 9th October 2014 (P-11) are issued beyond the period of three years of the Amendment Act 2002 and consequently the same cannot be construed to be issued while exercising the powers by the Central Government under the provisions of Section 31-A and thus cannot form the part and parcel of the PC & PNDT Act for the purposes of prosecution of the petitioners.

33. That even otherwise as per the provisions of Article 20(1) of the Constitution of India, (which finds place under Part-III, Fundamental Rights), no person shall be convicted of any offence except for violation of law in force at the time of the commission of the Act charged as an offence but in the present case the respondents have miserably failed to substantiate that the petitioners have violated any provisions of the PC & PNDT Act merely by running their clinic which was duly registered by the competent authority.

34. Consequently, this Court is of the opinion that the guidelines dated 9th October 2014 (Annexure P-11) issued by the Central Government is of no consequence to fasten the liability of the petitioners to face prosecution under provision of the PC & PNDT Act as the law is well settled by the Hon'ble Supreme Court that while applying and interpreting the provisions of a statute resulting into the penal consequences, then the same are to be construed strictly and not liberally.

35. In view of the discussions made herein above, there is no material available on record to substantiate the allegations of the respondents that petitioners have violated any provisions of PC & PNDT Act merely by running Ultra Sound Centre, which was duly registered at the relevant time and imparting the IVF facilities.

Consequently, the allegation of the respondents that inspection team has pointed out discrepancies against the petitioners and they have violated the provisions of PC & PNDT Act by running their IVF Centre is fallacious and liable to be rejected and the same deserves to be quashed and set aside and there is no reason to go ahead with the prosecution of the present petitioners.”

(23) Learned senior counsel submitted that the aforesaid judgment stands upheld by Hon'ble Supreme Court in ***SLP (Crl.) No. 17069/2016***, vide order dated 11.11.2016, wherein the following order was passed:

“Delay condoned.

Since, learned counsel for the petitioners could not demonstrate to this Court, that the complaint was filed by the concerned Committee contemplated under Section 28 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, as amended in 2002 (for short “PC & PNDT Act”), we find no justification whatsoever to interfere with the impugned order passed by the High Court, in exercise of our jurisdiction under Article 136 of the Constitution of India.

The special leave petition is accordingly dismissed.”

(24) Learned senior counsel further submitted that thereafter, a review petition was filed, which was also dismissed by Hon'ble Supreme Court, vide order dated 01.02.2017 passed in ***Review Petition (Crl.) No. 32 of 2017***. The order reads as under:

“The instant petition has been filed by the petitioners seeking review of order of this Court dated 11.11.2016, whereby the special leave petition filed by them was dismissed.

Having carefully perused the petition for review, the order impugned and the papers annexed in support thereof, we are satisfied that the petitioners have failed to make out a case for review of the aforementioned order.

The review petition, accordingly, dismissed.”

(25) Learned senior counsel further referred to order dated 12.09.2018, passed by Hon'ble Supreme Court, whereby a ***Curative Petition (Crl.) No. 90/2017*** in ***R.P. (Crl.) No. 32/2017*** in ***SLP (Crl.) No. 8887/2016*** was dismissed by passing the following order:

“We have gone through the Curative Petition and the relevant documents. In our opinion, no case is made out within the parameters indicated in the decision of this Court in *Rupa Ashok Hurra vs. Ashok Hurra & Another*, reported in 2002 (4) SCC 388.

Hence, the Curative Petition is dismissed.”

(26) Learned senior counsel has further referred to judgment dated 02.11.2017 passed by this Court in *CWP No. 11171 of 2015*, titled as *Ishwar Singh Yadav* versus *State of Haryana and Ors.*, decided on 02.11.2017, wherein challenge was to an order passed by the Civil Surgeon- cum-District Appropriate Authority issuing certain directions to the private ultrasound centres. The order passed by the Civil Surgeon-cum-District Appropriate Authority was challenged on the ground that Civil Surgeon alone cannot act as District Appropriate Authority in violation of notification dated 07.11.2013 (referred to above), which provides for constitution of a District Appropriate Authority. While setting aside the order of Civil Surgeon-cum-District Appropriate Authority, this Court held as under:

“Be that as it may, the fact remains that there is no such provision either under the Act or Rules for delegating the powers by the members of the District Appropriate Authority, therefore, the procedure adopted by the other members of the District Appropriate Authority is totally illegal. If they had to delegate their powers to the Civil Surgeon like this, then there is no need for constituting the Committee of three members which is actually put in place so that one member may not pass arbitrary orders and all the decisions are taken by the meeting of minds.

This is not the scheme of the Act because the Act provides that all the decisions have to be taken by the District Appropriate Authority and the Civil Surgeon has not been given any exclusive power. Thus other two questions are also decided in favour of the petitioner, holding that the Civil Surgeon cannot act himself as the District Appropriate Authority as the decision has to be taken by the District Appropriate Authority in which all the three members are to be involved. Since there is no such provision either in the Act or the Rules shown to the Court during the course of hearing in this regard, therefore the letter dated 15.9.2015 by which other two members have delegated the Authority to the Civil Surgeon is erroneous and illegal.

Consequently, the petition is allowed and the order dated 01.5.2015 passed by the Civil Surgeon-cum-District Appropriate Authority is held to be patently illegal and the same is set aside.”

(27) Learned senior counsel has, thus, argued that since both the orders constituting the PNDD Teams were not issued by the respective District Appropriate Authority of Jhajjar and Gurugram, therefore, the entire prosecution of the petitioner is liable to be quashed.

(28) In reply, learned State counsel has argued that on receiving a secret information that co-accused Usha, who was working as tout and was running an illegal racket of sex determination, one Sheetal was made a decoy customer and one Kavita was made a shadow witness and thereafter, they were taken to ultrasound centre of the petitioner, whereby the petitioner performed the ultrasound of decoy customer Sheetal and received Rs. 25,000/- from tout Usha who retained Rs. 5,000/- and after the test was conducted, the PNDD team recovered the said amount from the petitioner as well as from tout Usha.

(29) Learned State counsel further submitted that the proper procedure was followed as firstly the District Appropriate Authority-cum- Civil Surgeon, Jhajjar constituted a team, which contacted the Chairman, DAA-cum-Civil Surgeon, Gurugram, who also constituted a team to assist the Jhajjar team and thereafter, the raid was conducted, however, learned State counsel, with reference to submissions in para 8 of the reply filed on behalf of the respondent, could not dispute that the Chairman, DAA, Jhajjar due to urgency constituted the team under the signatures of two members only. It is also not disputed in the reply that the team constituted by the Chairman, DAA, Gurugram was only under the signature of the Civil Surgeon and not by all the three members of the Committee. In para 32 of the reply, wherein, in corresponding para of the petition, it is stated that no copy of the spot memo or seizure memo was provided to the petitioner, though it is stated in the affidavit that Gurugram Team prepared spot memo and seizure memo, however, nothing is stated whether the same was supplied to petitioner in terms of aforesaid Rule 12(3).

(30) After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons:

(a) A perusal of letter dated 12.09.2016, constituting a PNDD Team by the Chairman, DAA-cum-Civil Surgeon, Jhajjar, clearly shows that it is signed by two members and not by the third member i.e. Member, DAA-cum-DPO(WCD), Jhajjar, therefore, it is not signed by a validly constituted District Appropriate Authority as per Section 17 of the PC & PNDD Act.

(b) Even a perusal of another order dated 12.09.2016, issued by Chairman, DAA-cum-Civil Surgeon, Gurugram, appointing a three member PNDT Team, shows that it was done under his sole signature and not by the other two members. This fact is not disputed in the reply/affidavit of the Deputy Civil Surgeon- cum-PNDT Nodal Officer, Gurugram, therefore, in view of the judgment in ***Dr. Ritu Prabhakar's*** case (supra), the whole procedure stands vitiated as the lapse on the part of both the District Appropriate Authorities is incurable defect.

(c) Further, as per procedure prescribed under Section 30 of the PC & PNDT Act read with Rule 12, it is mandatory to provide the copies of spot and seizure memos, if prepared at the spot, to a persons from whom the recovery is effected, however, a perusal of the impugned complaint as well as the reply filed in Court, nowhere shows that this procedure was followed and a copy of the list prepared by the team was ever supplied to petitioner, though in para 7 of the complaint, it is stated that spot and seizure memos were prepared at the spot but a copy thereof was never supplied to the petitioner. This also vitiates the procedure adopted by the complainant.

(d) As per provisions, the complaint is to be filed by the District Appropriate Authority, which consists of three members, whereas the impugned complaint has been filed by the District Nodal Officer. It is also held by the Court in ***Ishwar Singh Yadav's*** case (supra) that the District Appropriate Authority cannot delegate its powers, therefore, the procedure adopted by the District Appropriate Authority, Gurugram is totally illegal, which cannot be termed as an curable irregularity.

(e) Therefore, in view of the well settled principles of law, when chances of conviction of petitioner are bleak, no purpose will be served to allow continuation of his prosecution.

(31) Therefore, in view of the above discussion, the present petition is allowed and the impugned complaint (Annexure P-4) along with all the subsequent proceedings arising therefrom including summoning order dated 04.12.2017 (Annexure P-5) is hereby quashed

qua the petitioner.

J.S. Mehndiratta