

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on :14th January, 2016*
Judgment pronounced on: 25th April, 2016

+ **CrI.M.C. 3128/2011 & CrI.M.As. 11094/2011, 983/2014, 984/2014 & CrI.M.A. No. 985/2014 & 15484/2015**

Dr. HARSH MAHAJAN Petitioner
Through Mr.Vikas Singh, Sr. Adv. with
Ms.Deepika Kalia & Mr.Kapish Seth,
Adv.

versus

STATE NCT OF DELHI & ANR. Respondents
Through Mr.Ravi Nayak, APP for the State
Mr.Puneet Mittal, Adv. with Mr.A.N.
Aggarwal, Adv. for R-2.

+ **CRL.M.C. 731/2012 & CrI.M.A. 2577/2012**

Dr. NITEN SETH Petitioner
Through Mr.Vikas Pahwa, Sr. Adv. with
Mr.Sumant De, Adv.

versus

STATE & ANR Respondents
Through Mr.Ravi Nayak, APP for the State.
Mr.Puneet Mittal, Adv. with
Mr.A.N. Aggarwal, Adv. for R-2.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Dr.Harsh Mahajan (who is accused No.2 in the trial Court) has filed the abovementioned petition being CrI.M.C. 3128/2011 under Section 482 of

Cr.P.C. read with Article 227 of the Constitution of India for quashing of the summoning order dated 8th June, 2011 and 28th May, 2013 punishable under Section 23(1) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the PC-PNDT Act) passed by the Chief Metropolitan Magistrate Delhi in CC No. 327/01/08

2. Dr. Niten Seth (who is accused No.3 in the trial Court) has filed above mentioned petition being CrI.M.C. 731/2012 under Section 482 of the Cr.P.C. for quashing of the Criminal Compliant No.327/01/08 under Section 23(1) of the PC-PNDT Act, the summoning order dated 8th June, 2011 passed by the Metropolitan Magistrate, Rohini, New Delhi and all further proceedings arising out of the same.

3. Both matters are arising from the same complaint. The facts are also common, thus, both are being decided by one single judgment along with all miscellaneous applications.

4. The brief facts of the case are that the marriage between Dr. Mitu Khurana complainant (respondent No.2 herein) and Dr. Kumar Khurana (accused No.4 in the trial court) was solemnised on 28th November, 2004. She came to know about the pregnancy on 5th February, 2005.

5. It is not disputed that the complainant has filed various cases against her husband and her in-laws regarding dowry and many litigation of her matrimonial dispute which are pending.

6. Both the complainant and her husband are qualified doctors. Both the petitioners are also doctors by profession who have no relation whatsoever

either with the complainant or with the husband and in-laws of the complainant.

7. The complainant was admitted in the Jaipur Golden Hospital casualty ward (accused No.1 in the trial court) on 28th April, 2005 with the history of allegedly consuming cake with eggs to which she was allergic with a complaint of vomiting after taking parathas in the morning. After thoroughly examining her, the gynecologist Dr.S.N. Basu advised her to get an ultrasound of the whole abdomen including KUB (Kidney, Ureter, Bladder).

8. As per the complainant, foetal ultrasound was done in the hospital. She was discharged on being informed that everything was normal. On 3rd May, 2005 Mahajan Imaging Centre sent a report of 103 F-Forms to the CDMO for the period of 2005 which covers the USG report of Dr.Balujas dated 28th April, 2005 but according to her it does not include her Form-F.

9. On 6th July, 2005 she made a police complaint in which she had alleged that her in-laws were demanding a sex determination test. It is not disputed that another ultrasound of the abdomen of the complainant was done on 12th July, 2005 at the insistence of the complainant herself at Sir Ganga Ram Hospital, while she was there for her Anti Natal Care.

10. The complainant delivered twin baby girls on 11th August, 2005.

11. In another complaint filed on 12th March, 2006 by her to the SHO, Janakpuri Police Station, it was alleged about the torture by both her husband and her in-laws. The entire complaint is with regard to the allegations that her husband and her in-laws were not happy that she

delivered daughters in the family and the ill-treatment that she got from the family after the delivery of the daughters.

12. Similarly, in her third complaint which was made on 9th June, 2006 to the Deputy Commissioner of Police, Women Cell, New Delhi in which also she complained about being tortured by her in-laws as well as her husband. She alleged in the complaint that her husband wanted the DNA testing of the babies, as according to him it was written in his horoscope that he would only have one son.

In the said complaint, she further alleged that there was threat to her life and the lives of her daughters and she has already made a complaint to the Janakpuri Police Station.

13. After the lapse of one year ten months, she filed the complaint made on 10th April, 2008 to the National Commission for Women, New Delhi mainly alleging torture upon her by her husband and her in-laws. In this complaint, she mentioned that a sex determination test was conducted upon her by deception but she did not refer the name of any doctor or hospital where the said alleged sex determination test was conducted. She also did not name the gynaecologist who referred her for the ultrasound test because without the said reference no ultrasound could have been conducted upon her at all. On the complaint made by the complainant to the CDMO, a three-members committee was constituted comprising of Dr. V.K. Aggarwal, Additional CDMO, Dr.Sangeeta, District PD Officer and Dr. Ritu Mathur, who went into great detail of the complaint made by the complainant.

The said committee examined the complainant and the various doctors and also sent a decoy customer, the pregnant lady, to the Jaipur Golden Hospital trying to get the sex determination done at the hospital. The committee, after a detailed enquiry came to the finding on 9th May, 2008 "that there is no direct and or circumstantial evidence of sex determination".

The committee also opined that the Form-F in question from the Jaipur Golden Hospital was not traceable although clearly under Section 29 of the PC-PNDT Act it was not obligatory for the hospital to maintain the said Form-F after the expiry of two years from the date of the test. The committee also gave a finding that there was no female foeticide, in fact the complainant gave birth to live twin girls.

14. On the basis of the fact that Form-F at the Jaipur Golden Hospital in respect of the complainant was not available, a case was registered against the hospital by the CDMO against which a petition has been filed by the said hospital before this Court being CrI. M.C. No. 460/2010, wherein the complainant has also been impleaded as a party (respondent No. 3).

15. On 9th May, 2008 the complainant disclosed for the first time in her complaint to the district Appropriate Authority that her brother-in-law namely one Deepesh Madan came to her in-laws house on 27th April, 2005 with a cake saying that it was eggless (as she was allergic to egg) and immediately upon eating the said cake she started having pain in the abdomen with nausea, vomiting and loose motions and she was forcefully taken to the Jaipur Golden Hospital where the sex determination test was done upon her at the said hospital. However, it is a matter of fact that in her earlier complaints made in various authorities, she did not mention about the

incident dated 27th April, 2005 stating that the cake being fed to her by her brother-in-law or about any sex determination test done upon her. The petitioners herein have no concern or any relation with the brother-in-law of the complainant.

16. Finally on 22nd November, 2008 the complainant/respondent No.2 herein had filed a complaint case before the Chief Metropolitan Magistrate being CC No. 327/01/08 titled as Dr. Mitu Khurana vs. Jaipur Golden Hospital, making allegations against accused Nos. 4 to 6 i.e. the husband of the complainant, mother-in-law, brother-in-law of the complainant, and also making Dr. Harsh Mahajan as accused No. 2, the Jaipur Golden Hospital as accused No. 1 and the radiologist, Nitin Seth accused No.3 who was employee of Dr. Harsh Mahajan and had conducted the test upon her. In the complaint, the allegations were made against the accused Nos. 1 to 3 of having conspired to conduct the sex determination test on the complainant. Mahajan Imaging Centre through Dr. Harsh Mahajan is made the accused No.2.

The complainant upon her examination under Section 200 Cr.P.C. made no specific allegation whatsoever against the petitioners herein but the only reference to the petitioners which was mentioned is read as under:

"She has stated that accused No. 3 was a radiologist was in fact an employee of accused No. 1 who was conducting ultra sound and other radiological diagnosis in the Jaipur Golden Hospital i.e. accused No. 1 with the knowledge of accused No. 2."

17. The trial Court, on the basis of the allegations on 8th June, 2011 found to be *prima facie* sufficient material on record against the petitioners for

offence punishable under Section 23 (1) of the PC-PNDT Act and summoning orders were passed.

18. The petition being CrI. M.C. No. 3128/2011 under Section 482 of the Cr.P.C. for quashing by Dr. Harsh Mahajan was filed on 17th September, 2011 on various grounds. This Court on 3rd May, 2013 while hearing CrI.M.C. 1740/2013 filed by the complainant quashed the entire summoning order dated 8th June, 2011 and directed the trial Court to pass a speaking order after hearing the complainant afresh. The trial court in view of orders of this Court passed a detailed summoning order. The trial court reiterated the same findings qua Dr. Harsh Mahajan as in the earlier summoning order to re-summon him. However, the trial Court did not actually summon him in view of the stay order passed by this Court in the present petition, of which amendment was sought.

19. By order dated 21st October, 2013 this Court while hearing the matter directed the petitioner to file the amended petition challenging the summoning order dated 28th May, 2013.

20. It is pertinent to mention that during the pendency of the present petitions, the Metropolitan Magistrate after hearing the parties on framing of charge, had passed a detailed reasoned order on 20th September, 2015 discharging the accused No. 1, 4, 5 and 6 being the Jaipur Golden Hospital, husband, mother in-law and the brother in-law of the complainant.

21. The Metropolitan Magistrate while discharging the above mentioned accused made the following observations :

“This court is of the considered view that in the present case there are certain lacunae in circumstantial evidence on which complainant is relying.

(a) As per the case of complainant in Jaipur Golden Hospital, her case for admission was recommended by Casualty Doctor and ultrasound was recommended by another doctor who was a Gynaecologist. Both these doctors have not been arrayed as accused and there is no allegation against them. This court is of the considered view that no occasion for ultrasound test would have arisen unless complainant had not been admitted on the recommendation of Casualty Doctor and her ultrasound had not been recommended by Gynaecologist.

(b) As per the case of complainant, she was taken to Jaipur Golden Hospital although she wanted to get treatment at Ganga Ram Hospital. This court is of the considered view that as per the testimony of complainant she was in severe pain and it is very natural on the part of any reasonable man to take the patient in nearer Hospital in such case instead of taking the patient to distant hospital.

(c) As per testimony of complainant on 26.03.2008 while she was shifting in rented accommodation documents relating to Jaipur Golden Hospital came in her hand and only then she came to know that sex determination was conducted at Jaipur Golden Hospital. As per complainant, said document is incriminating against accused. This court is of the considered view that there was no use of such document for accused no. 4 and it is highly improbable that a reasonable man will keep safely any document which is of incriminating nature against him instead of destroying the same.

(d) Complainant of this case is a Doctor. Even her parents are doctors and her sister is a Radiologist. This court is of the considered view that it is highly improbable that a person who is from Doctor Profession will not see his discharge summary after discharge from treatment.

(e) As per the case of complainant, in the year 2006 in drunken state, accused No. 4 admitted before her that they got conducted the

sex determination during her pregnancy, however, as per complainant she did not believe the same as she was not aware that where said sex determination was done and so she did not file any case. As per testimony of complainant, she was admitted in Jaipur Golden Hospital against her wish and Form F was also not filled up and in all other hospitals said form was filled up whenever ultrasound was conducted during pregnancy. This court is of the considered view that in view of the above facts, complainant could easily find out the hospital where sex determination was conducted.

(f) It is also relevant to mention here that present complaint has been filed after institution of matrimonial proceeding between the parties and filing of number of complaints against accused persons by complainant."

22. It has been informed by the learned counsel appearing on behalf of the complainant that the Revision Petition against the said order dated 29th September, 2015 is pending. As both the petitioners in the above said matter have filed the above referred petitions wherein the stay order were passed, thus no orders were passed by the trial Court. Both parties i.e. the petitioners and counsel for the complainant agreed and pressed for the hearing of these petitions.

23. It was/is the case of complainant that Foetal ultrasound was done on 28th April, 2005 at Mahajan Imaging Centre Jaipur, Golden Hospital when gynaecologist had ordered ultrasound whole abdomen with KUB. Ultrasound Report has been admitted by the petitioners. The said USG report does not give the mandatory declaration to be given at the end of every ultrasound report which is in violation of Section 10(1)(a) of P.C-PNDT Act. Dr. Harsh Mahajan was the partner in the partnership firm Mahajan Diagnostics who was managing the radiological centre at Jaipur Golden Hospital under the name of Mahajan Imaging Centre. Dr. Niten Seth

(radiologist who did the Ultrasound) was working in the centre of Dr. Harsh Mahajan at Jaipur Golden Hospital. The petitioners did not inform the authorities about the same. The conduct of the hospital was also in violation of Rule 18(v) and 18(vii).

It is stated that the hospital tried to hide from the appropriate authorities (CDMO) the fact that foetal ultrasound was done on her. The weeding of records after 2 years is a lame excuse when Form-F of Dr Mitu Khurana was not submitted to appropriate authority on 3rd May, 2005 (within a week from the date of Ultrasound). The record of the Form-F for April 2005 submitted by the petitioner was available with the appropriate authorities.

24. Dr. Harsh Mahajan is seeking quashing of the summoning order passed by the Magistrate without application of mind as the evidence of the complainant recorded by the Magistrate before issuing summoning order did not in any manner implicate the petitioner with any crime. The summoning order is also liable to be set aside as the Magistrate has completely failed to appreciate the factual background in which the complaint had been made which did not inspire any confidence in the veracity of the complaint made by the complainant.

He submits that the complaint by the complainant who is a Doctor herself and who due to a marital discord has filed a large number of cases against her husband and her in-laws and in her anxiety to file one more case, has filed the instant complaint by making her brother-in-law also an accused along with him, who is the owner of the Mahajan Imaging Centre and against Nitin Seth who used to work under him who conducted the test upon

the complainant. At the relevant time, he was the partner of a partnership firm was managing the radiological centre at the Jaipur Golden Hospital.

25. Dr.Nitin Seth was working as a Consultant Radiologist with Mahajan Imaging Centre since 2005 which was *inter alia* managing the radiological Centre at the Jaipur Golden Hospital, New Delhi. Mahajan Imaging Centre is empanelled with the CGHS, the Supreme Court, this Court and many other prestigious public and private organizations.

- i. He remained a Consultant Radiologist with Mahajan Imaging Centre till December, 2005. Till that time, neither the complainant/ respondent No.2 nor her family members ever contacted the petitioner nor did she or any one of her relatives ever made any complaint against the petitioner herein.
- ii. The complainant/respondent No.2 was having serious marital dispute with her husband and her in-laws since 2005 and she filed many complaints against them. In none of the said complaints did she allege that any sex determination test had been conducted on her.
- iii. After the expiry of 3 years and 12 days i.e. on 9th May, 2008 of the said ultrasound test was conducted and when the twin children of the complainant/respondent No.2 were almost 2 years and 8 months old, she approached the District Medical Officer and filed a complaint under the PC PNDT Act complaining that a sex determination test had been

conducted on her at the Jaipur Golden Hospital on 28th April, 2005.

- iv. Under Section 29 of the PC PNDT Act, records of any test done under the Act are to be preserved only for a period of 2 years or such other period as may be prescribed. The prescribed period in this case is also 2 years. The complainant/respondent No.2, however, for the first time after more than 3 years from the date of the test made a complaint alleging that a sex determination test had been conducted on her. Clearly, the said complaint was time barred. It was filed only to implicate her husband, mother-in-law and brother-in-law in a fresh case. The complainant without any valid reasons roped in both the proprietor of Mahajan Imaging Centre, Dr.Harsh Mahajan as well as the petitioner.
- v. The complaint was barred by limitation. The Magistrate nevertheless took cognizance of the complaint and even overlooked the mandatory provisions of Section 202(1) of the Cr.P.C.
- vi. While challenging the impugned order, it is alleged that the Magistrate summoned the petitioner as well as Dr. Harsh Mahajan, Proprietor of Mahajan Imaging Centre for the offence punishable under Section 23(1) of the PC-PNDT Act even though there was not *prima facie* material available before the Court to pass the summoning order. Since the

petitioner resides outside the territorial jurisdiction of the trial court, it was mandatory on the part of the trial court to postpone the issue of process against the petitioner and conduct an inquiry or investigation as provided for under Section 202(1) of the Cr.P.C. However, the Metropolitan Magistrate mechanically issued summons to them.

26. It is argued on behalf of both the petitioners that the complaint was barred by law as the maximum punishment under Section 23(1) of the PC PNDT Act is 3 years and the complaint has been filed after 3 years being barred by limitation under Section 468 of the Cr.P.C. It is also argued that the complaint was not maintainable in the absence of mandatory notice of 15 days required before filing of complaint before the competent court as required under Section 28 of the PC-PNDT Act and since the specific notice in the manner prescribed was not issued to the appropriate authority, the complaint was not maintainable and cognizance of offence against the petitioners could not have been taken. The trial court in the present case has ignored both the vital issues while passing the summoning orders.

27. The allegations made in the complaint, as per settled law are to be taken as true as per their face value and accepted in their entirety at the stage of considering the petition for quashing. In case Court on mere reading finds that these do not *prima facie* constitute any offence or make out a case against the accused, as per law the quashing of a complaint is permissible or if there is an express legal bar engrafted in any of the provisions of the Cr.P.C. to the institution and continuance of the proceedings.

There is a reason behind the said logic about the scope of interference of summoning order while exercising the power vested with the High Court under Section 482 Cr.PC., as it is settled law that summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. Reliance is placed on *Pepsi Food Ltd. and Another v. Special Judicial Magistrate and Others*, (1998) 5 SCC 749.

28. It is now to consider as to whether the present case comes within the exception of the general provisions or whether due process of law has been abused by the complainant on the face value of complaint as alleged in the petition or whether any case of quashing of the complaint against the petitioners is made out. No doubt in the complaint the allegations made by the complainant are of serious in nature.

29. Admittedly after the test was conducted on 28th April, 2005, in the fourth complaint dated 9th May, 2008, the complainant for the first time made an allegation about her being taken to Jaipur Golden Hospital by her husband on 28th April, 2005, after a gap of 3 years before the District Medical Officer (DMO) who under the statute, constituted a committee to conduct an enquiry under the Act gave a report on 26th September, 2008 exonerating the hospital and both the petitioners herein, of all the charges leveled by the complainant. The complainant after getting no relief from the District Medical Officers filed a complaint against the petitioner and other accused persons on 22nd November, 2008.

30. The Supreme Court has quashed the proceedings on the ground of delay in the case of *Zandu Pharamceutical Works Ltd. v. Mohd. Sharaful Haque and Another* 2005(1) SCC 122.

31. As far as issue of limitation is concerned, in the complaint a statement was made against them is that on 28th April, 2005, they have connived with the husband and in-laws of the complainant to conduct the sex determination test on that date. Till 8th May, 2008 various complaints were filed by the complainant and many other litigation are pending in courts between the complainant, her husband and her in-laws, no where the names of two doctors /petitioners herein were crept that they had hatched any conspiracy with the husband and in-laws of the complainant. Therefore, with regard to the petitioners in the present matters, issue of limitation has become material in the circumstances mentioned.

32. Being a doctor herself and having experience about the litigation in court with the husband and in-laws and various complaints made by her, it is

apparent that she had the knowledge about the nature of the tests being conducted i.e. ultrasound of the abdomen including KUB. On the date of test i.e. on 28th April, 2005, she was aware that she was pregnant. There is some force in the submissions of the petitioners as appears from the record she being unsuccessful litigant who did not get any relief from any form or any authority after the expiry of more than three years in order to enlarge the scope of litigation with her husband and in-laws with some hope also tried to entangle the petitioners who both are also doctors, otherwise she could have filed the complaint without any delay.

33. The complainant filed the complaint after the delay of almost 3 years and 12 days before District Medical Officer under the statute. During this period the complainant made no complaint to any authority pertaining to the alleged sex determination test concluded upon her on 28th April, 2005 naming against the petitioner.

34. Thus, the cognizance taken by the Magistrate is beyond the period of three years of the commission of the date of alleged offence as pleaded. The Magistrate did not deal with any of the provisions of Section 468-473 of CrPC while applying his judicial mind at the time of issuing summons against the petitioners. As far as complaint against her husband and her in-laws is concerned, the facts and circumstances are apparently distinct and no opinion can be expressed by this Court about merit.

35. Dr. Harsh Mahajan is a pioneer in the field of MRI in India and was one of the first to set up a MRI Centre in 1992 in Delhi, prior to its availability at both AIIMS and PGI Chandigarh. The petitioner due to the excellence achieved by him in the field of radiology was made the Honorary

Radiologist to the President of India in 1998 and was awarded Padma Shri in the year 2002.

36. Dr. Niten Seth is a Radiologist with a spotless and unblemished career spanning over 14 years who has been made a scapegoat in a matrimonial dispute with which he has no concern whatsoever. He had worked with Mahajan Imaging Centre at Jaipur Golden Hospital only till December, 2005. He was mere an employee and was performing his statutory duties of conducting test on the request of the expert doctors and was not responsible for maintaining the register/Forms 17 as per the requirements of the Act. As per him, Form F was duly filed by him.

37. Counsel for the petitioners argued that they have not committed any violation of the above mentioned Act and merely performed their duty and conducted the ultrasound of the abdomen including KUB (Kidney, Ureter, Bladder) which includes ultrasound of the foetus being part of the lower abdomen and the allegations of not maintaining Form F 17 under the Act is not applicable to the petitioners and thus, no liability can be fastened on them and there is no evidence whatsoever that the said Form-F was not filed and by law the hospital is not required to maintain the said record under Section 29 of the PC-PNDT Act beyond a period of two years from the date of the ultra sound examination.

38. With regard to other issue about the issuance of mandatory notice of 15 days to the appropriate authority, let me now deal with the same.

39. The Metropolitan Magistrate while considering the complaint and issuing summons against the petitioner has not taken into account that the

compliance of Section 28 of the PC-PNDT Act which was mandatory and which provides that the complainant has to give notice of not less than 15 days in the manner prescribed to the appropriate authority of the alleged offence and of his intention to make a complaint to the Court. It is the case of the petitioner that no such notice was ever given to the appropriate authority in order to comply with the mandate of Section 28.

40. Section 28 of the PC-PNDT Act read 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 the State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than¹[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.

41. The complainant in her general complaint to the appropriate authority on 9th May, 2008 made an allegation that she suspects that a sex determination test had been done upon her, however, she does not suspect

the said test done upon her at the Jaipur Golden Hospital as she does not enclose along with her complaint the ultrasound test done upon her at the Jaipur Golden Hospital

42. Admittedly, in the complaint to the Magistrate dated 22nd November, 2008, the complainant only makes a reference of the complaint dated 9th May, 2008 made to the appropriate authority as compliance of Section 28 of the PC-PNDT Act. Even in the said complaint dated 9th May, 2008, the Complainant only suspects commission of an offence under the PC-PNDT Act and thus neither makes any allegation qua the Petitioner nor expresses any intention to make a complaint to the court, therefore the said complaint does not fulfill the compliance of Section 28 of the PC-PNDT Act.

43. The complainant/respondent No.2 in response to the present petition being CrI. M.C. No.3128/2011, for the first time relied upon letter dated 18th October, 2008 as annexure-D-12 of which there is no reference in the complaint before the Magistrate to show that she has complied with the mandate of Section 28. The contents of the said letter reads as under:-

“To,
District Appropriate Authority
North West District
Delhi Administration Dispensary Building
Sector-13 Rohini
New Delhi-110085

Ref-Complaint under PNDT Act dated 09/05/08

Sir,

This is in reference to my complaint dated 09/05/8 under P.N.D.T. Act. This is to give you the required notice of 15 days, that as you have failed to take any action on my complaint, I'll

be filing the case in the court after 15 days of date of sending of this letter i.e., 15 days after 18/10/08.

Thanking you

Cc-

1) Director P.N.D.T.

Directorate of Family Welfare

State Appropriate Authority

Residential Complex

Bhagwan Mahavir Hospital

58 Pitumpura

New Delhi-85”

Yours Sincerely

-Sd-

Dr.Mitu Khurana nee Khosla

A-1/39, Janakpuri

New Delhi-

18/10/08

44. The said letter does not show whether it was sent by post or delivered by hand to the District Appropriate Authority with a copy to Director of PNDDT.

45. Even if it is taken as correct the same is not in compliance of the said Section as in the said letter there is no reference of any offence under the PC-PNDDT Act along with the name of the persons against whom the complaint is sought to be made as by that time by her own showing she suspected that the alleged sex determination was done upon her during the ultrasound at the Jaipur Golden Hospital and accordingly in the said letter was supposed to name the persons against whom she intends to make a complaint before the court for commission of offence under the PC-PNDDT Act. The Magistrate had no jurisdiction to take cognizance on the complaint dated 22nd November, 2008 in view of the statutory bar under Section 28 of the PC-PNDDT Act.

46. Under Section 29 of the PC PNDDT Act the records of any test done under the Act are to be preserved only for a period of two years. The complainant for the first time after more than three years from the date of the

test made a complaint on 9th May, 2008 to the District Appropriate Authority complaining that a sex determination test had been conducted on her at the Jaipur Golden Hospital on 28th April, 2005 when she had gone to the said hospital for pain in her abdomen by a gynaecologist in that hospital. The complaint was against the hospital, with regard to the maintenance of records. As the records are to be maintained only for two years, the allegation of the sex determination test was an afterthought.

47. Even the summoning order has been passed without following the mandatory procedure prescribed by Section 202(1) of the Cr.P.C. and process has not been postponed and inquiry/investigation envisaged therein has not been conducted. The summoning order therefore, being violative deserves to be quashed on this ground alone. No enquiry or investigation has been conducted by the Magistrate or under his directions. The enquiry envisaged by the Magistrate under Section 202 (1) Cr.P.C. is more and beyond the mere examination of the complaint and the complainant/witnesses which is envisaged under Section 200. The enquiry envisaged under Section 202(1) ought to be independent in nature and not to be based on the complainant's evidence alone. In the present case, the Magistrate having simply examined the complainants and pass the summoning order.

48. It was required in the facts of the present nature of the case because the Magistrate while summoning the petitioners totally overlooked that the Expert Body under the statute had already conducted a thorough investigation into the allegations made by the complainant and has held that no test pertaining to sex determination was conducted in the present case and there is no violation committed by the accused persons. The said

Investigating Committee consisted of 3 prominent doctors of Delhi namely Dr VK Aggarwal, Dr Sangeeta and Dr Ritu Mathur. As thorough investigation by an expert body was already conducted, there was no occasion for the Magistrate to ignore the statutory report and summon the accused persons without even dealing with the evidence/findings of the Committee.

The said committee examined the complainant and the various doctors and also sent a decoy customer, the pregnant lady, to the Jaipur Golden Hospital trying to get the sex determination done at the hospital. The Committee, after a detailed enquiry came to the finding “that there is no direct and/or circumstantial evidence of sex determination”. The committee also opined that the Form F in question from the Jaipur Golden Hospital was not traceable although clearly under Section 29 of the PC-PNDT Act it was not obligatory for the hospital to maintain the said Form F after the expiry of two years from the date of the test. The Committee also gave a finding that there was no female foeticide, in fact the complainant gave birth to live twin girls.

49. In view of the aforesaid reasons, I am of the view that the complainant filed by the respondent No.1 is time barred against the petitioners and there is also no valid compliance of prior 15 days mandatory notice within the meaning of Section 28 of the PC PNDT Act by the complainant. Thus, the impugned summoning orders against the petitioners herein suffer from infirmity.

50. The ends of justice is served by quashing the proceedings against the petitioners only, as both the petitioners who are doctors cannot be allowed to go through rigmarole of criminal proceedings for long trial, once it is held

that the complaint against them is time barred and is also not maintainable in the absence of mandatory requirement of notice under Section 28 of the Act.

51. In view of the above said reasons, I direct that the summoning orders dated 8th June, 2011 and 28th May, 2013 and all the proceedings arising from the complaint filed by the respondent No.2 passed by Metropolitan Magistrate, Delhi against both the petitioners are quashed.

52. No costs.

(MANMOHAN SINGH)
JUDGE

APRIL 25, 2016

