

22/09/2012



IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR
S.B. CR. MISC. PETITION NO. 3761/2012

Dr. Manju Rathi W/o Dr. Sanjay Rathi, R/o Rathi Hospital,
Ajmer Road, Kishangarh, District Ajmer.

----- PETITIONER

VERSUS

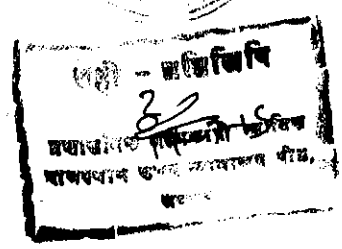
1. STATE OF RAJASTHAN through public prosecutor
2. District PCPNDT Coordinator Office, Chief Medical & Health Officer, Jaipur.

----- RESPONDENT

S.B. CRIMINAL MISC. PETITION UNDER SECTION 482 OF CODE OF CRIMINAL PROCEDURE CODE TO QUASH THE CRIMINAL PROCEEDINGS OF CRIMINAL CASE NO. 990/11 PENDING BEFORE THE SPECIAL ADDITIONAL CHIEF JUDICIAL MAGISTRATE, (PCPNDT) AJMER FOR THE OFFENCE UNDER SECTION 4(3), 6 AND 23 OF THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994 AND THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) RULES, 1996

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TO



IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

S.B. Criminal Misc. Petition No. 3761/12

DATE OF ORDER : 07/07/2015

HON'BLE MR. JUSTICE M.N. BHANDARI

Mr. A.K. Gupta with Mr. Harihar Nath Mishra, Mr. Prem Kumar Sharma, Mr. Gaurav Gupta, Mr. Rahul Kamwar, Mr. Kapil Gupta, Mr. Anurag Kulshreshtha, Mr. Jitendra Mitrucka, Mr. Sudhir Jain, Mr. Dinesh Hissaria, Mr. Pankaj Gupta, Mr. Anurag Shukla, Mr. Vineet Mehta, Mr. Sunil Kumar Singh, Mr. P.S. Sharma, Mr. Santosh Kumar Jain, & Mr. Surendra Sharma, for PETITIONERS

Mr. G.S. Gill, Additional Advocate General with Mr. H.C. Kandpal –
for the State.

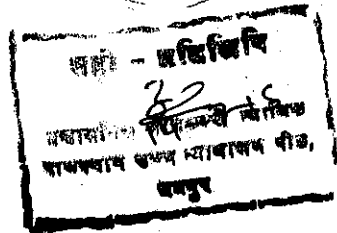
Ms. Vandana Sharma, Dy. Govt. Counsel

Order pronounced in open court today. The petition is dismissed along with stay application. (See separate order in S.B. Criminal Misc. Petition No. 1828/2013).

BY ORDER



COURT MASTER



IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR

S.B. Criminal Misc. Petition No.1828/2013
Dr. Ravi Mohan Mahawar

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.1126/2012
Dr. Neena

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2686/2012
Dr. Rajnish Sharma

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.3352/2012
Dr. Ruchi Goyal

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.3539/2012
Dr. Pradeep Kumar Sharma

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.3761/2012
Dr. Manju Rathi

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.3998/2012
Dr. Manju Gochar

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.224/2013
Dr. Rakhi Jain

Versus

Director (RCH) and Authorized Officer State Appropriate Authority

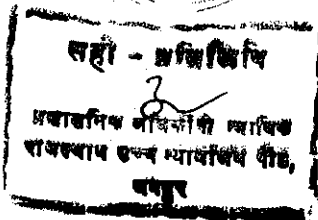
AND

S.B. Criminal Misc. Petition No.2512/2013
Dr. Rajeev Gupta

Versus

State of Rajasthan & Anr.

AND



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S.B. Criminal Misc. Petition No. 2513/2013
Dr. Rajeev Gupta

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2530/2013
Dr. Prakash Mundra

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2531/2013
Dr. Rajeev Gupta

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2532/2013
Dr. Rajeev Gupta

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2533/2013
Dr. Rajeev Gupta

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2568/2013
Dr. Ram Prakash Saini & Anr.

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2641/2013
Dr. Sangeeta Agarwal

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No. 2657/2013
Dr. Pradeep Gupta

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.3003/2013
Dr. Chandra Bala Parnami

Versus

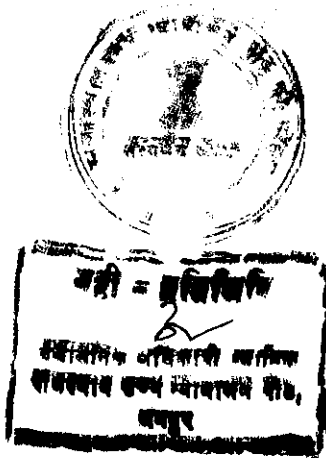
State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.3004/2013
Prem Niketan Hospital & Anr.

Versus

State of Rajasthan & Ors.



4/12

AND
S.B. Criminal Misc. Petition No.3080/2013
Umesh Sharma
Versus
State of Rajasthan
AND

S.B. Criminal Misc. Petition No.3081/2013
Umesh Sharma
Versus
State of Rajasthan
AND

S.B. Criminal Misc. Petition No.3082/2013
Umesh Sharma
Versus
State of Rajasthan
AND

S.B. Criminal Misc. Petition No.3553/2013
Dr. Gaytri Sharma
Versus
State of Rajasthan
AND

S.B. Criminal Misc. Petition No.3554/2013
Dr. Gaytri Sharma
Versus
State of Rajasthan
AND

S.B. Criminal Misc. Petition No.4293/2013
Dr. J.K. Singhvi
Versus
State of Rajasthan
AND

S.B. Criminal Misc. Petition No.361/2014
Vikram Singh Shekhawat & Anr.
Versus
State of Rajasthan & Anr.
AND

S.B. Criminal Misc. Petition No.439/2014
Dr. Hemant Mishra
Versus
State of Rajasthan
AND

S.B. Criminal Misc. Petition No.2626/2013
Subhash Sharma
Versus
State of Rajasthan & Anr.
AND

4/11



सही - अतिरिक्ति
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अध्यात्मिक न्यायालयी अदालत
राजस्थान उच्च न्यायालय, जयपुर

S.B. Criminal Misc. Petition No.2017/2014
Kamla Memorial Diagnostic and Research Centre

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.1114/2013
Carewell Diagnostic and Research Centre

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.1207/2013
Hanuman Choudhary

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.1226/2013
Dr. Deen Dayal Gupta

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.1316/2013
Dr. Ajay Agarwal & Anr.

Versus

State of Rajasthan

AND

S.B. Criminal Misc. Petition No.1764/2013
Smt. Bidami Devi & Anr.

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.1813/2013
Dr. Moniya Goyal

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.1873/2013
Dr. Sanjeev Bhargava

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2037/2013
Dr. Shardha Agarwal

Versus

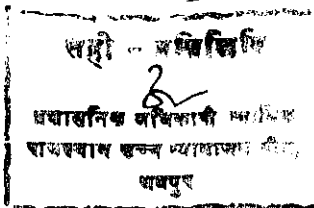
State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2081/2013
Dr. Arun Sharma

Versus

State of Rajasthan



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AND
 S.B. Criminal Misc. Petition No.2160/2013
 Mahesh Chand Sethi
Versus
 State of Rajasthan
 AND

S.B. Criminal Misc. Petition No.2178/2013
 Dr. Laxmichand
Versus
 State of Rajasthan
 AND

S.B. Criminal Misc. Petition No.2196/2013
 Dr. Harshvardhan
Versus
 State of Rajasthan
 AND

S.B. Criminal Misc. Petition No.2263/2013
 Dr. Prithviraj Kucheria
Versus
 State of Rajasthan
 AND

S.B. Criminal Misc. Petition No.2405/2013
 Beeju Samuel & Anr.
Versus
 State of Rajasthan & Anr.
 AND

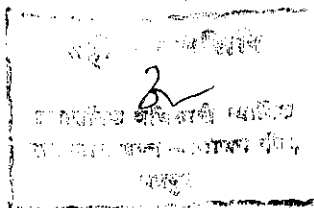
S.B. Criminal Misc. Petition No.2406/2013
 Dr. Sunil Dutta
Versus
 State of Rajasthan & Anr.
 AND

S.B. Criminal Misc. Petition No.2407/2013
 Dr. Kaushalya Meena
Versus
 State of Rajasthan & Ors.
 AND

S.B. Criminal Misc. Petition No.2429/2013
 Dr. Shardha Agarwal
Versus
 State of Rajasthan & Anr.
 AND

S.B. Criminal Misc. Petition No.2454/2013
 Dr. Sunil Saxena
Versus
 State of Rajasthan & Anr.
 AND

S.B. Criminal Misc. Petition No.2455/2013
 Dr. Nitin Kumar Gupta



Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2456/2013

D.C. Hospital & Anr.

Versus

State of Rajasthan & Anr.

AND

S.B. Criminal Misc. Petition No.2511/2013

Dr. Rajeev Gupta

Versus

State of Rajasthan & Anr.

DATE OF ORDER : 7th July, 2015HON'BLE MR. JUSTICE M.N. BHANDARI

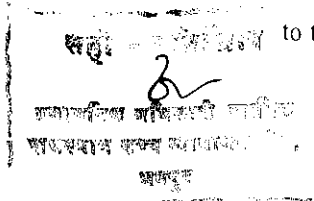
Mr. A.K. Gupta with Mr. Harihar Nath Mishra, Mr. Prem Kumar Sharma, Mr. Gaurav Gupta, Mr. Rahul Kamwar, Mr. Kapil Gupta, Mr. Anurag Kulshreshtha, Mr. Jitendra Mitrucka, Mr. Sudhir Jain, Mr. Dinesh Hissaria, Mr. Pankaj Gupta, Mr. Anurag Shukla, Mr. Vineet Mehta, Mr. Sunil Kumar Singh, Mr. P.S. Sharma, Mr. Santosh Kumar Jain, & Mr. Surendra Sharma, for **PETITIONERS**

Mr. G.S. Gill, Additional Advocate General with Mr. H.C. Kandpal –
for the State.

Ms. Vandana Sharma, Dy. Govt. Counsel

By these criminal misc. petitions, a challenge is made to the complaint and subsequent orders of cognizance of the offence under Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short "the Act of 1994").

A criminal complaint was filed against the petitioners apart from others for violation of various provisions of the Act of 1994 and the rules made thereunder. The complaint aforesaid was filed under Section 28 of the Act of 1994. In pursuance to the complaint, cognizance of offence was taken in majority of the cases. A challenge to the complaint as well as order for cognizance of offence has been



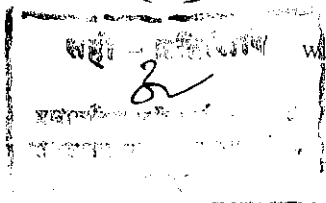
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made on various grounds.

Learned counsel for petitioners submitted that an inspection was made by the person not authorized under the Act of 1994. A reference of Section 17 & 17A of the Act of 1994 was given to show as to who is authorized to inspect diagnostic lab or clinic, etc. As per Sections 17 and 17A of the Act of 1994, authority of inspection lies with the Appropriate Authority and the Advisory Committee. The inspection can be made by the person having qualification as is required for the Appropriate Authority or Advisory Committee under Sections 17 & 17A of the Act of 1994. In the instant cases, inspection was not caused by the authorised person, thus not only inspection vitiates but subsequent complaint and the order of cognizance of offence also.

Further, reference of Section 28 of the Act of 1994 is given to show as to who is authorized to file complaint. As per Section 28, complaint can be filed only by the appropriate authority or a person authorised by the Central or the State Government. In the instant cases, complaint was filed without authorization in favour of the person and is not by the appropriate authority, hence, on that count also, impugned complaint and the order of cognizance of offence deserve to be quashed.

In few cases, complaint has been filed by the private person without following provisions of Section 28(1)(b). No document was



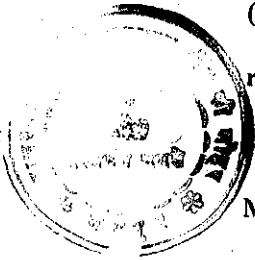
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produced to show that private person had given notice as is required under Section 28(1)(b) of the Act of 1994.

A further reference of Section 17(4) of the Act of 1994 has been given to show that competence for investigation of the complaint for breach of provisions of the Act or the Rules made thereunder lies only with the appropriate authority.

In the case of Dr. Rajnish Sharma (S.B. Criminal Misc. Petition No.2686/2012), the FIR was registered prior to filing of the complaint. It resulted in negative final report. A protest petition was filed but negative final report was accepted and, thereupon, a private complaint was filed by none else but an Advocate having personal bias against the petitioner. After acceptance of negative final report, the complaint was not maintainable. The revision petition was filed by the petitioners but it was then dismissed hence additional ground has been taken in one case regarding maintainability of the complaint after acceptance of negative final report.

Learned counsel made reference of judgments of Apex Court in the case of Babubhai Vs. State of Gujarat & Ors., reported in (2010) 12 SCC 254, Poonam Chand Jain & Anr. Vs. Fazru, reported in (2010) 2 SCC 631, Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, reported in AIR 1962 SC 876 and in the case of Mahesh Chand Vs. B. Janardhan Reddy & Anr., reported in 2003 (1) SCC 734 to support their arguments.

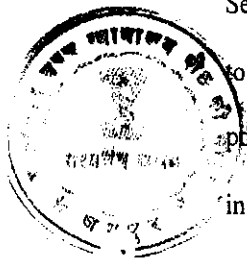


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The other argument of the learned counsel for petitioners was in reference to Form 'F' provided under the Act of 1994 and the Rules made thereunder. The minor discrepancy or delay of few days in filing Form 'F' is not an offence. The Form 'F' can be filled before 5th day of the month as it is to be submitted on the aforesaid date, thus it can be filled any time before it. The respondents ignored the aforesaid and majority of the cases are in reference to minor discrepancy in Form 'F' or delay therein. A reference of the judgment of Bombay High Court in the case of **Dr. Alka & Anr. Vs. The State of Maharashtra & Anr., Criminal Application No.3500/2011, decided on 11th May, 2012** has been given. Therein, Form 'F' was not found complete, thus notice was given followed by seizure of the machine. It was held that non-filing of Form 'F' completely cannot be said to be illegal. In view of judgment aforesaid, delay in filling of Form 'F' cannot be taken to be in violation of the provisions of the Act of 1994 and Rules made thereunder.

Learned counsel for petitioners further made reference of Sections 12 and 30 of the Act of 1994. Section 30 refers about power to search and seize the record etc. The provision aforesaid gives powers to the appropriate authority to search and seize the record but, in the instant cases, search was not made by the appropriate authority.

It is lastly contended that before issuance of process, learned Magistrate failed to record his satisfaction for taking cognizance of



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 महाराष्ट्र राज्य पोलीस दल, मुंबई
 महाराष्ट्र राज्य पोलीस दल, मुंबई
 महाराष्ट्र राज्य पोलीस दल, मुंबई

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the offence and the order was passed in a cyclostyle manner. Some petitioners challenged the order of cognizance of offence by maintaining revisions but they were dismissed. A reference of judgment of Apex Court in the case of **Krishnan & Anr Vs. Krishnaveni & Anr.**, reported in 1997 (4) SCC 241 has been given to show maintainability of the petition under Section 482 Cr.P.C. even after dismissal of the revision petitions. The prayer is accordingly made to quash the complaint so as order of cognizance of offence and order passed on the revision petitions.

Per contra, learned Additional Advocate General Shri G.S. Gill, referring to the arguments of learned counsel for petitioners, submitted that inspection of the diagnostic lab, clinic/hospital was caused by the authorised person. Referring to Sections 17, 17A, 28 and 30 of the Act of 1994, it is submitted that inspection/search can be made by the appropriate authority or a person authorised by it, thus it is not necessary that in all the cases, search/inspection should be caused only by the appropriate authority. The State of Rajasthan issued Notification on 05.01.2012 by invoking Section 17(2) of the Act of 1994. The notification was issued to authorise an officer at the District level. The authority under Section 28(1) of the Act of 1994 for filing complaint was also given. The search/inspection was conducted by the person authorized and, finding violation of the provisions of the Act of 1994 & Rules made thereunder, the



सही - प्रमाणित
 प्रशासनिक अधिकारी का कार्यालय
 राजस्थान सरकार, स्वास्थ्य एवं कुटुंब कल्याण विभाग,
 जयपुर

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complaint was filed. The issue aforesaid was dealt with by the learned Magistrate while passing order of cognizance. In few cases, even revision petition was filed but finding no substance therein, it was dismissed after dealing with all the issues raised herein. There is no violation of Sections 17, 17A, 28 and 30 of the Act of 1994 and the Rules made thereunder.

The petitioners have failed to take proper interpretation of the provisions of the Act of 1994 while referring definition of "Appropriate Authority" given under Section 2(a) of the Act of 1994. The appropriate authority has been given various powers, which includes investigation of the complaint for breach of the provisions of the Act and the Rules made thereunder. Section 17(4) of the Act of 1994 does not provide about filing of the complaint on search. Section 30 makes reference of search and seizure by the appropriate authority or authorised person. The inspection was caused by the authorised person as per Section 30. It is not necessary that authorised person should possess the same qualification as is provided for appropriate authority under Section 17 of the Act of 1994. In view of above, neither inspection/search is defective nor filing of the complaint thereupon. The complaint can be filed by the appropriate authority or a person authorised on behalf of the State Government. In the instant cases, complaint was filed by the authorised person, hence it was rightly entertained, followed by order



सही - प्रतिलिपि
 प्रशासनिक अधिकारी न्यायिक
 राज्यपाल भवन न्यायालय ईट, ३
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of cognizance.

In few cases, complaint has been filed by private persons but it is after observing Section 28 of the Act of 1994. A prior notice was given followed by a complaint. The private complainant had given notice to the department on 12.11.2007 through registered post with its acknowledgement. After notice, complaint was filed, thus it was in compliance to Section 28(1)(b) of the Act of 1994.

In the case of Dr. Rajnish Sharma, FIR was registered followed by negative final report. It was accepted on the ground that complaint alone is maintainable, thus subsequent complaint is not barred. The issue aforesaid was dealt with by the revisional court elaborately. So far as judgments referred by learned counsel for petitioners on the aforesaid issues are concerned, none applies to the facts of this case. In view of above, even after dismissal of the protest petition, complaint was rightly filed and maintained. The revision petition was dismissed considering the aforesaid issues and now these petitions under Section 482 Cr.P.C. are nothing but second revision petition and not maintainable in absence of gross abuse of process.

In view of violation of the provisions of the Act of 1994 and Rules made thereunder, cognizance of offence has been taken. It is largely in reference to discrepancy in the Form 'F', which is to be filled before diagnosis. There was lapse on the part of the petitioners to do so. Forms 'F' and 'G' have to be filled prior to diagnosis with



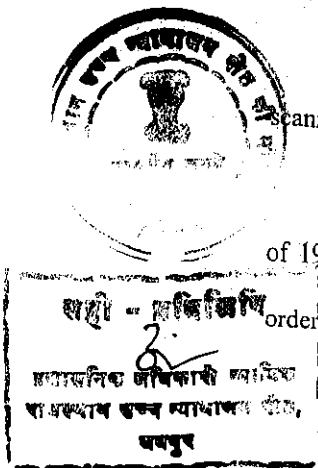
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thumb impression of the patient. In case of lapse, it amounts to violation of the provisions of the Act of 1994 and Rules made thereunder. Learned Additional Advocate General has given reference of one of the case of Dr. Ravi Mohan Mahawar (S.B. Criminal Misc. Petition No.1828/2013). In the search operation, it was found that one lady patient Seema was diagnosed and informed about sex of the child and in the same way Smt. Babudi was also informed about it. She felt happy when informed about birth of a male child. The search was made after payment of Rs.6,000/- and therein it was found that Form 'F' was not filled apart from violation of other provisions detailed out in the complaint itself. The significance of Form 'F' comes out from the aforesaid itself. The submission of Form 'F' to the department on the appointed date does not mean that it can be filled as and when it is found convenient by the Diagnostic Centre. Looking to all these facts and serious allegations against the petitioners, process was issued by the court below after taking cognizance of the offence and there is no illegality in it. A prayer is made for dismissal of all the petitions.

I have considered rival submission made by the parties and scanned the record carefully.

The complaint was filed for violation of provisions of the Act of 1994 and Rules made thereunder. After filing of the complaint, order for cognizance of offence was passed. A challenge to the order



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of cognizance of offence has been made. In few petitions, it was challenged by maintaining revision petitions. The revision petitions were dismissed, thus order of cognizance so as the order passed on the revision petitions, have been challenged.

The grounds for challenge are in reference to various provisions of the Act of 1994, thus Sections 2(a), 17, 17A, 28 & 30 are quoted hereunder for ready reference:

"2(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 subsection (1) or subsection (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 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 that occurrence.



सही - प्रतिलिपि
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 स्वास्थ्य विभाग की न्यायिक
 सहायता एवं न्यायालय सेवा,
 नयापूर

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(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;

(e) To take appropriate legal action against the use of any sex selection technique by any person at any place, *suo-motu* or brought to its notice and also to initiate independent investigations in such matter;

(f) To create public awareness against the practice of sex selection or prenatal determination of sex;

(g) To supervise the implementation of the provisions of the Act and rules;

(h) To recommend to the CSB and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) To take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

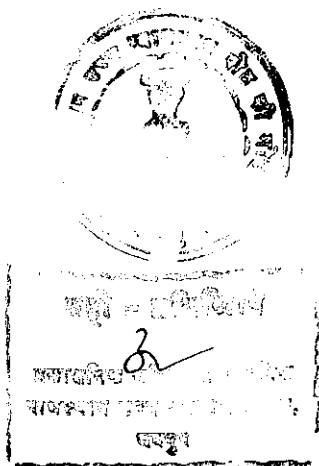
(5) The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

(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



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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.

"17A. Powers of Appropriate Authorities.- The Appropriate Authority shall have the powers in respect of the following matters, namely:-

a) Summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;

b) Production of any document or material object relating to clause (a);

c) Issuing search warrant for any place suspected to be indulging in sex selection techniques or prenatal sex determination; and

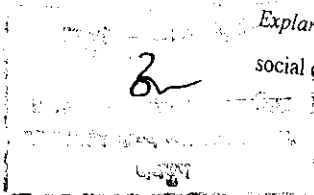
d) Any other matter which may be prescribed."

"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.



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(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."

"30. Power to search and seize records, etc. - (1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place, such Authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act."

Section 2(a) provides definition of "Appropriate Authority", whereas, Section 17 talks about appointment of appropriate authority and advisory committee. The first argument of the learned counsel for petitioners is in reference to Sections 17 & 17A of the Act of 1994. A challenge is made to the inspection and complaint by an officer other than appropriate authority. The perusal of Sections 17, 17A & 28



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apart from Section 30 shows as to who can make search and seizure and file complaint thereupon. Section 17 talks about appointment of appropriate authority, however, search and even filing of the complaint can be either by the appropriate authority or the State Government and the officer authorized for it. In view of above, it cannot be said that search can be conducted only by the appropriate authority.

In the same manner, it is not necessary that the complaint has to be filed by the appropriate authority but it can be filed by an officer authorised by the appropriate authority or Central and the State Government. In the instant cases, inspection followed by filing of the complaint is by the authorised officer, thus cannot be said to be in violation of the Act of 1994. The petitioners have failed to take notice of the Notification issued for authorization. It was referred by the learned Additional Advocate General Shri G.S. Gill.

A reference of Section 17(4) of the Act of 1994 has been given to indicate duties of the appropriate authority. The appropriate authority has been assigned with certain powers but it does not make a reference of filing of the complaint by it under the said provision. The authority for search and seizure apart from filing of the complaint is separately provided under Section 28 & 30 of the Act of 1994. The search and seizure can be made by the appropriate authority or by an authorized officer. Section 17 or 17A does not exclude



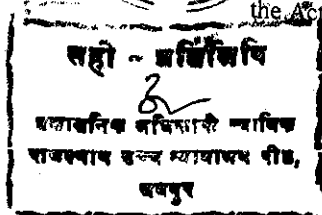
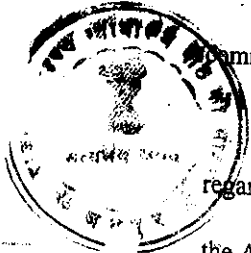
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inspection/search and filing of the complaint by the authorised officer. Section 17 speaks about appointment and powers of appropriate authority and advisory committee, whereas, Sections 28 & 30 of the Act of 1994 are for filing of complaint and search & seizure. In view of above, argument of the learned counsel for petitioners that inspection was not conducted by the appropriate authority or complaint should have been filed by the appropriate authority, cannot be accepted. The reference of authorization in favour of an officer has been given in the complaint itself.

In the case of Dr. Rajnish Sharma, no doubt, it is true that FIR was earlier lodged followed by negative final report but it was given on the ground of maintainability of the FIR as only complaint is maintainable. The issue regarding maintainability of complaint was considered by the revisional court in detail. The subsequent complaint was maintainable as FIR was not sustainable in view of Section 28 of the Act of 1994 where cognizance of offence is provided only on a complaint. The negative final report was accepted as FIR was not maintainable, thus complaint was rightly maintained followed by order of cognizance of offence. I do not find that revisional court has committed any error in recording its finding on the aforesaid issue.

The other argument in the case of Dr. Rajnish Sharma is regarding filing of complaint by a private person. Section 28(1)(b) of the Act provides for filing of complaint even by a private person. The



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complaint therein was filed after notice to the department through registered post as per Section 28(1)(b) of the Act, thus it cannot be said that complaint would not be maintainable. It is not necessary that all the complaints have to be filed by the appropriate authority but it can be filed by the authorised officer and even by a private person, provided procedure is followed for that. In the instant cases, the order passed by the revisional court reveals that complaint was maintained after following the procedure. I do not find any error in the order passed by the revisional court.

The judgments cited by learned counsel for petitioners need no elaboration as facts of those cases are distinguishable so as the ratio propounded therein.

The other common argument raised by the learned counsel for petitioners was in reference to Form 'F'. It was submitted that incomplete or non-filling of Form 'F' does not amount to offence. It is looking to the fact that Form 'F' can be submitted in the department on or before appointed date, thus can be filled at any time. I do not find substance in this argument. When Form 'F' is to be filled before diagnosis, then requirement aforesaid cannot be ignored. It cannot be that details of the patient may be noted on the loose paper and then filled in Form 'F' after lapse of few days. In that eventuality, how signature/thumb impression of the patient would be obtained on the



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the details of each patient are maintained and are duly verified by her by putting thumb impression or signature on the Form. In view of above, I am unable to accept judgment of Bombay High Court in the case of Dr. Alka (supra) wherein filling of Form 'F', after few days, is held to be permissible. The violation of various provisions of the Act and Rules made thereunder in reference to Form 'F' and other illegalities cannot be ignored. The complaint so as the order of cognizance and even order of revisional court cannot be quashed on the aforesaid ground.

In view of discussion made above, I do not find any substance in any of the petitions, hence all the criminal misc. petitions are dismissed. The stay earlier granted stands vacated with the aforesaid.

Before parting with the judgment, it would be necessary to refer order of the Division Bench of this court in the case of Dr. S.K. Gupta Vs. Union of India & Ors., D.B. Public Interest Litigation No.3270/2012, dated 25.11.2014 where direction has been given for expeditious disposal of the cases, thus the court below will take up at the earliest for its early disposal.



[M.N.BHANDARI], J.

