[2024] 9 S.C.R. 397 : 2024 INSC 684

Ravinder Kumar
v.
State of Haryana

(Criminal Appeal No. 3747 of 2024)

12 September 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

FIR under Section 23 of the Pre Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and a complaint under Section 28(1) was filed against the appellant and co-accused persons. The allegation was of indulging in the illegal activity of sex determination using ultrasound. In the facts of the case, when there was no legal decision by the Appropriate Authority in terms of sub-section (1) of Section 30 to search for the appellant's clinic and the decision to carry out the search was an individual decision of the Civil Surgeon-Chairman of the concerned Appropriate Authority, whether the search conducted would be illegal; meaning to be assigned to the expression "has reason to believe" under sub-section (1) of Section 30.

Headnotes†

Pre Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 – ss.30(1), 17, 2(a) – "has reason to believe" – Interpretation:

Held: s.30 is a very drastic provision granting power to the Appropriate Authority or any officer authorized by it to enter a Genetic Laboratory, a Genetic Clinic, or any other place to examine the record found therein, to seize and seal the same – The first part of sub-section (1) of s.30 safeguards these centres or laboratories from arbitrary search and seizure action – The condition precedent for the search of a clinic is that the Appropriate Authority must have reason to believe that an offence under the 1994 Act has been or is being committed – Interpretation of "reason to believe" will depend on the context in which it is used in a particular legislation – Under the 1994 Act, there is a power to initiate action under the statute if the authority has reason to believe that certain facts exist – Thus, the test is whether a reasonable man, under the circumstances

* Author

placed before him, would be propelled to take action under the statute – Considering the object of the 1994 Act, the expression "reason to believe" cannot be construed in a manner which would create a procedural roadblock – The reason is that once there is any material placed before the Appropriate Authority based on which action of search is required to be undertaken, if the action is delayed, the very object of passing orders of search would be frustrated – Therefore, the complaint or other material received by the appropriate authority or its members should be immediately made available to all its members – After examining the same, the Appropriate authority must expeditiously decide whether there is a reason to believe that an offence under the 1994 Act has been or is being committed and it is not required to record reasons for the same but, there has to be a rational basis to form that belief – However, the decision to take action under sub-section (1) of s.30 must be of the Appropriate Authority and not of its individual members otherwise the decision will be illegal – The Appropriate Authority for the district consisted of the Civil Surgeon, the District Program Officer of the Women and Child Development Department and the District Attorney – On facts, no legal decision was made by the Appropriate Authority in terms of sub-section (1) of s.30 to search for the appellant's clinic and the decision to carry out the search was an individual decision of the Civil Surgeon-Chairman of the concerned Appropriate Authority – Thus, the action of search is itself vitiated – FIR and complaint were based on the material seized during the raid and since, the search itself is entirely illegal, continuing prosecution based on such an illegal search will be abuse of the process of law – Impugned judgment set aside – FIR and complaint quashed. [Paras 10-14, 16, 17]

Case Law Cited

Aslam Mohammad Merchant v. Competent Authority & Ors. **[2008] 10 SCR 332 : (2008) 14 SCC 186 – referred to.**

List of Acts

Pre Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; Penal Code, 1860.

List of Keywords

Sex determination of a foetus; Racket; Medical termination of the pregnancy; Illegal activity; Ultrasound; Decoy patient; Raid; Appropriate Authority; Clinic; Search of a clinic; Civil Surgeon;

Appropriate Authority, Search and seizure action; Search and seize records; "has reason to believe"; Reasonable man; Illegal search; Abuse of the process of law; FIR; Complaint; Quashing.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3747 of 2024

From the Judgment and Order dated 13.01.2023 of the High Court of Punjab & Haryana at Chandigarh in CRM-M No.13495 of 2018.

Appearances for Parties

Vineet Bhagat, Kewal Singh, Mrs. Manju Bhagat, Mrs. Archna Midha, Aksveer Singh Saggu, Advs. for the Appellant.

Deepak Thukral, A.A.G., Samar Vijay Singh, Saurabh Sachdeva, Sandeep Saxena, Ms. Sabarni Som, Fateh Singh, T. V. Surendranath, Prakhar Garg, Makrand Pratap Singh, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The appellant claims that he has been practising as a general Physician since 2001 and as a Radiologist since 2007. On 27th April 2017, a team comprising four officers raided the appellant's clinic. Based on the complaint against one woman, Dhanpati (accused no.1), that she is running a racket of sex determination and medical termination of pregnancy, a decoy patient was selected. The allegation is that Dhanpati was contracted to do the medical termination of the pregnancy of the decoy patient. The decoy patient and shadow witness, S.I. Usha Rani, informed Dhanpati that they knew the sex of the foetus. Dhanpati called the decoy patient on 27th April 2017 at 8 am for MTP. The shadow witness informed Dhanpati that family members of the decoy patient were suggesting reconfirming the sex of the foetus through ultrasound. Dhanpati called the shadow witness on 27th April 2017 at 7 am and stated that the Doctor who would perform the ultrasound would charge Rs.20,000/- but ultimately, she fixed the deal at Rs.15,000/-.

2. Accordingly, the decoy patient was given a sum of Rs.15,000/-. The members of the search party, along with the police staff as well as the shadow witness and decoy patient, went to the Gurugram bus stand where Dhanpati asked for Rs.15,000/- which amount was handed over to her. After that, a nurse, Anju (accused no.2), was called by Dhanpati, and a part of the amount of Rs.15,000/- was given to her. Thereafter, the decoy patient and others entered the appellant's clinic, known as the Divine Diagnostic Centre at Gurugram. The decoy patient was taken inside. When the decoy patient and Anju came out of the diagnostic centre, the police caught them. The search team entered the diagnostic centre. The cash amount was seized, and the team recovered even the USG report for the decoy patient. It was alleged that the appellant had signed the said report.

3. A first information report was registered on 27th April 2017 in the Police Station, Gurugram, alleging the commission of an offence punishable under Section 23 of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, 'the Act of 1994'). It was followed by a complaint filed by the District Appropriate Authority under Section 28(1) of the Act of 1994 before the learned Chief Judicial Magistrate, Gurugram, alleging the commission of punishable offences against the appellant, the said Dhanpati and Anju. The allegation against the appellant and the co-accused was of indulging in the illegal activity of sex determination of a foetus by using ultrasound.

4. The appellant filed a petition for quashing the complaint and the FIR before the High Court. By the impugned judgment, the High Court declined to quash both the complaint and FIR.

SUBMISSIONS

5. Learned counsel appearing for the appellant invited our attention to the provisions of the 1994 Act. He pointed out a notification issued on 7th November 2013 by the Government of Haryana under sub-section (2) read with clause (b) of sub-section (3) of Section 17 of the 1994 Act by which Appropriate Authorities were constituted for each District consisting of Civil Surgeon, District Programme Officer, Women and Child Development Department and District Attorney. He submitted that the search /raid purportedly conducted under the orders of the Appropriate Authority of the District under Section 30(1) of the 1994 Act was completely illegal as there was no order

passed by the Appropriate Authority authorising the conduct of the raid. He submitted that only the Civil Surgeon signed the order authorising officers to conduct the raid. But, two other members of the Appropriate Authority did not sign the said order. He pointed out an affidavit filed by Dr. Virender Yadav, the Chairman of the District Appropriate Authority-cum-Civil Surgeon, Gurugram. He stated that the Civil Surgeon accepted that he alone constituted the raiding team vide order dated 27th April 2017 and issued the order authorising the search. He submitted that the so-called raid under Section 30(1) is the only basis of the FIR and the complaint. He submitted that the raid was completely illegal as it was not conducted by the officers authorised by the Appropriate Authority.

6. The learned counsel appearing for the State did not dispute that the order appointing officers to conduct the raid was issued and signed only by the Civil Surgeon, the Appropriate Authority's Chairman. He submitted that as there was an emergency, the Civil Surgeon had to take action. He submitted that the complaint under sub-Section (1) of Section 28 has been filed by an officer authorised by the Appropriate Authority. The decision to file the complaint is made by the Appropriate Authority. The learned counsel appearing for the respondent would, therefore, submit that even if there is a defect in the procedure adopted while appointing the officers to conduct the raid, it does not amount to illegality, but it is a curable irregularity which has been cured by subsequent order of the Appropriate Authority to file a complaint.

CONSIDERATION OF SUBMISSIONS

7. To appreciate the submissions, we must refer to relevant provisions of the 1994 Act. Section 23 of the 1994 Act, which is a penal provision, reads thus:

> **"23. Offences and penalties**.- (1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment

for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

2. The name of the registered medical practitioner shall be reported by the appropriate authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

3. Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre- natal diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

4. For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection."

8. The procedure for cognizance is incorporated in Section 28, which reads thus:

"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.

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.

9. Section 30(1) deals with the power to search and seize records, which reads thus:

"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 office punishable under this Act.

.. .. .."

(emphasis added)

10. The condition precedent for the search of a clinic is that the Appropriate Authority must have reason to believe that an offence under the 1994 Act has been or is being committed. The Appropriate Authority, as defined under Section 2(a), is the Appropriate Authority appointed under Section 17. Sub-sections (1) to (3) of Section 17 read thus: -

> **"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.
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> 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.
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> 3. The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,—
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> (a) when appointed for the whole of the State or the Union territory, consisting of the following three members:-
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> i) an officer of or above the rank of the Joint Director of Health and Family Welfare - Chairperson;
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> ii) an eminent woman representing women's organization; and
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> iii) an officer of Law Department of the State or the Union territory concerned:
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> 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.
>
> .. .. "

11. Now, coming back to Section 30, it is a very drastic provision which grants power to the Appropriate Authority or any officer authorized by it to enter a Genetic Laboratory, a Genetic Clinic, or any other place to examine the record found therein, to seize the same and even seal the same. The first part of sub-section (1) of Section 30 safeguards these centres or laboratories from arbitrary search and seizure action. The safeguard is that search and seizure can be authorized only if the Appropriate Authority has a reason to believe that an offence under the 1994 Act has been committed or is being committed.

12. The question is what meaning can be assigned to the expression "has reason to believe". Section 26 of the Indian Penal Code defines the expression "reason to believe", which reads thus:

> **"26. "Reason to believe".—** A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise."

In the case of ***Aslam Mohammad Merchant v. Competent Authority & Ors.,***[1] this Court had an occasion to interpret the same expression. In paragraph 41, this Court held thus:

> **"41.** It is now a trite law that whenever a statute provides for "reason to believe", either the reasons should appear on the face of the notice or they must be available on the materials which had been placed before him."

However, interpretation of the expression will depend on the context in which it is used in a particular legislation. In some statutes like the present one, there is a power to initiate action under the statute if the authority has reason to believe that certain facts exist. The test is whether a reasonable man, under the circumstances placed before him, would be propelled to take action under the statute. Considering the object of the 1994 Act, the expression "reason to believe" cannot be construed in a manner which would create a procedural roadblock. The reason is that once there is any material placed before the Appropriate Authority based on which action of search is required to be undertaken, if the action is delayed, the very object of passing orders of search would be frustrated. Therefore,

1 [2008] 10 SCR 332 : (2008) 14 SCC 186

what is needed is that the complaint or other material received by the appropriate authority or its members should be immediately made available to all its members. After examining the same, the Appropriate authority must expeditiously decide whether there is a reason to believe that an offence under the 1994 Act has been or is being committed. The Appropriate Authority is not required to record reasons for concluding that it has reason to believe that an offence under the 1994 Act has been or is being committed. But, there has to be a rational basis to form that belief. However, the decision to take action under sub-section (1) of Section 30 must be of the Appropriate Authority and not of its individual members.

13. Under the notification dated 7th November 2013, the Appropriate Authority for the district consists of the Civil Surgeon, the District Program Officer of the Women and Child Development Department, and the District Attorney. The Civil Surgeon is the Chairman of the appropriate authority. Looking at the object of sub-section (1) of Section 30 and the express language used therein, only the Chairman or any other member acting alone cannot authorise search under sub-section (1) of Section 30. It must be a decision of the Appropriate Authority. If a single member of the Appropriate Authority authorises a search, it will be completely illegal being contrary to sub-section (1) of Section 30. If the law requires a particular thing to be done in a particular manner, the same shall be done in that manner only. In the present case, going by the affidavit filed by Dr Virender Yadav, the Chairman of the District Appropriate Authority cum-Civil Surgeon, Gurugram, the decision to conduct a search by appointing three officers by order dated 27th April 2017 was only his decision purportedly taken in his capacity as the Chairman of the Appropriate Authority. Admittedly, the other two members of the appropriate authority are not parties to the said decision. The Civil Surgeon has given the excuse of urgency. The Appropriate authority doesn't need to have a physical meeting. The Civil Surgeon could have held a video meeting with the other two members. However, when a video meeting is held, every member must be made aware of the complaint or the material on which a decision will be made. It was a matter of a few minutes.

14. Therefore, in the facts of the case, no legal decision was made by the Appropriate Authority in terms of sub-section (1) of Section 30 to search for the appellant's clinic. As stated earlier, sub-section (1)

of Section 30 provides a safeguard by laying down that only if the Appropriate Authority has reason to believe that an offence under the 1994 Act has been committed or is being committed that a search can be authorized. In this case, there is no decision of the Appropriate Authority, and the decision to carry out the search is an individual decision of the Civil Surgeon, who was the Chairman of the concerned Appropriate Authority. Therefore, the action of search is itself vitiated.

15. There is another factual aspect of the case. The seizure Memo dated 27th April 2017 (Annexure P-4) contains the names of three persons. The Seizure Memo records that on 27th April 2017, the District Appropriate Authority constituted a team comprising three members whose names were stated in the seizure memo. However, a letter dated 27th April 2017 (annexure P-3) addressed by Deputy Civil Surgeon Rewari to Deputy Civil Surgeon Gurugram records that the team comprised four members, and the raid was conducted by the said four members.

16. A perusal of the impugned FIR and impugned complaint shows that its foundation is the material seized during the raid on 27th April 2017. Except for what was found in the search and the seized documents, there is nothing to connect the accused with the offence punishable under Section 23 of the 1994 Act. As the search itself is entirely illegal, continuing prosecution based on such an illegal search will amount to abuse of the process of law. The High Court ought to have noticed the illegality we have pointed out.

17. Therefore, the appeal is allowed, and the impugned judgment dated 13th January 2023 is set aside. FIR No.408, dated 27th April 2017, registered in the Police Station, Gurugram at Gurugram, is hereby quashed. The complaint bearing no. COMA No.40 of 2018, pending before the court of learned Chief Judicial Magistrate, Gurugram, also stands quashed.

Result of the Case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey