

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3912-2018 (O&M)

DR. SHYAM BIHARI

..... Petitioner

VERSUS

STATE OF HARYANA

..... Respondent

1.	Judgment reserved on	06.04.2026
2.	Judgment pronounced on	03.07.2026
3.	Judgment uploaded on	10.07.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced.	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	NIL

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Argued by : Mr. Akashdeep Singh, Advocate for the petitioner.

Mr. Praveen Kumar, DAG, Haryana.

YASHVIR SINGH RATHOR, J.

1. The present revision petition has been filed for setting aside the order dated 29.10.2018 passed by the Court of learned Additional Sessions Judge, Hisar, whereby the revisional Court reversed the order of discharge dated 12.04.2017 passed by the Court of learned Sub Divisional Judicial Magistrate, Hansi in case arising out of FIR No.534 dated 28.07.2016, registered under Sections 4, 5, 6, and 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short ‘PCPNDT Act’) and Sections 315, 420 of the Indian Penal Code, 1860 (for short ‘IPC’) Police Station City Hansi,



District Hisar and directed the learned trial Court to pass a fresh order on charge.

2. The contents of FIR would read as under:-

“Today, that is on 27.07.2016, a health department team comprising of Dr. Kuldeep, Deputy Civil Surgeon, Rohtak, and Dr. Satyawar, Deputy Civil Surgeon, Rohtak, received secret information regarding sex determination of the fetus, and on the basis of the same, informed Dr. Tejpal Sharma, Civil Surgeon, Hisar, who in turn informed the Chairperson, Appropriate Authority-cum-Civil Surgeon, Hisar. Thereupon, the Chairperson constituted a team consisting of Dr. Tejpal Sharma, Deputy Civil Surgeon, Hisar, Dr. Anil Ahuja, Medical Officer, and Shri Kishan Kumar, District Drug Control Officer, Hisar. They were directed to undertake joint action against the culprits of sex determination under the PC and PNDT Act, along with the health department team of Rohtak and a special team of SP Hisar. The joint team met at Meham, where decoy witness Smt. Neelam and shadow witness Sunil, husband of Neelam, had already been arranged. Decoy witnesses were handed over marked currency notes of Rs.27,500 by Dr. Kuldeep. Smt. Neelam, along with her husband Sunil, went to meet the tout, Smt. Sudesh, at the Meham Bus Stand and boarded a Haryana Roadways Bus to Hansi. At Hansi, they alighted at Kali Devi Chowk and went to Garg Hospital, where they got a receipt prepared. Thereafter, they went to Janta Diagnostic Centre, Ambedkar Chowk, Hansi. After taking Rs.26,500 from the decoy customer, Smt. Sudesh took Smt. Neelam to Janta Diagnostic Centre to get an ultrasound done to determine the sex of the fetus. During this period, the raiding teams of Rohtak and Hisar continuously chased them. Smt. Neelam went inside, where an ultrasound was performed, and she was informed that the fetus was a male child. Smt. Neelam came out and signaled to the team. Thereupon, the joint team raided the premises of Janta Diagnostic Centre, Hansi. The marked currency of Rs.26,500 was recovered from the possession of Sh. S.S. Mann, owner of Janta Diagnostic Centre, which was kept under the ultrasound machine in the USG room. The team sealed all four ultrasound machines. Statements of decoy



patient Neelam, shadow witness Sunil, receptionist Yashpal, and registered sonologist Dr. Sudhir Kumar Dhusia were recorded. It was disclosed that Sh. S.S. Mann, despite not being a doctor, had conducted the ultrasound. The complainant Dr. Tejpal Sharma requested that legal action be taken against the accused. Sd/- English Dr. Tejpal Sharma, Deputy Civil Surgeon, Hisar, dated 27.07.2016.”

3. As per the prosecution version, Janta Diagnostic Centre, Ambedkar Chowk, Hansi, was raided on 27.07.2016 by a joint team after secret information was received regarding illegal prenatal sex determination. The decoy customer, Smt. Neelam, was sent into the clinic through a mediator, Smt. Sudesh. An ultrasound was performed on Smt. Neelam by Sh. S.S. Mann, the owner of the diagnostic centre, who charged Rs.26,500 and disclosed that she was carrying a male fetus. Immediately thereafter, a raid was conducted, the marked currency notes were recovered from Sh. S.S. Mann and the clinic's receptionist, Yashpal, along with the owner and tout, were apprehended.

4. As per the prosecution case, the name of the present petitioner, Dr. Shyam Bihari, did not figure in the FIR or the spot memo prepared by the raiding team on the day of the raid, i.e., 27.07.2016. The ultrasound report and the mandatory Form 'F' recovered from the spot mentioned the name of Dr. Sudhir Kumar Dhusia as the performing radiologist. Investigation revealed that Dr. Dhusia had been appointed as the full-time consultant radiologist at Janta Diagnostic Centre since February 2015 on a monthly salary of Rs.1,00,000, and his appointment was duly recorded on 09.02.2015 by the District Appropriate Authority,



Hisar. Dr. Dhusia, in his statement got recorded on the spot, categorically stated that he was the only registered USG operator of the clinic since February 2015, and that the petitioner, Dr. Shyam Bihari, had never visited Janta Diagnostic Centre ever since he had joined in February 2015.

5. After the completion of investigation, the petitioner was arrested after a gap of approximately one month, on 28.08.2016. In his disclosure statement recorded on 29.08.2016, the petitioner stated that he had worked at Janta Diagnostic Centre only upto 05.11.2012 and thereafter, he shifted his practice to Delhi and Gurgaon. During the course of investigation, the police recovered documents showing that on the date of the raid, i.e., 27.07.2016, the petitioner was employed as a consultant radiologist at Health Map Diagnostic, Civil Hospital, Gurgaon, under a valid registration till 14.10.2020. The attendance register of Civil Hospital, Gurgaon, was also taken into possession, which clearly marked the petitioner as "Present" on 27.07.2016, the day of the raid. Conversely, the attendance register of Janta Diagnostic Centre, Hansi, showed the presence of Dr. Dhusia and did not contain the petitioner's name.

6. After due investigation, a report under Section 173 Cr.P.C. (Challan) was submitted against the accused persons, including the petitioner. After hearing the Public Prosecutor and the learned defence counsel, the Court of learned Sub Divisional Judicial Magistrate, Hansi, vide order dated 12.04.2017, discharged the petitioner, observing that there was no substantive evidence of conspiracy or involvement of the



petitioner on the date of occurrence, as he was proved to be working at Gurgaon on the said date.

7. Feeling aggrieved, the State preferred a revision petition against the discharge order. The Court of learned Additional Sessions Judge, Hisar, vide impugned order dated 29.10.2018, allowed the revision petition and set aside the discharge order, directing the trial Court to pass a fresh order on charge. The sole reasoning given by the revisional Court was that the petitioner's name continued to appear on the registration/panel list of doctors for Janta Diagnostic Centre, and since his name had not been formally struck off by the authorities, he must be deemed to be on the panel of the clinic at the time of the raid. The revisional Court further noted that being registered at two separate diagnostic centres across two districts constituted a violation of the PCPNDT Rules.

8. Feeling aggrieved, the petition in hand has been instituted and the record has been perused. All the parties have been heard.

9. Learned counsel for the petitioner argued that the impugned order dated 29.10.2018 is manifestly illegal and based on mere conjectures and surmises. He contended that the petitioner was not present at the scene of crime at the time of raid and was physically present at Civil Hospital, Gurgaon, on the date of the raid, as established from the attendance register and registration certificates seized by the police themselves. He further argued that there is no allegation or evidence of any conspiracy under Section 120-B IPC or active



participation of the petitioner in the sex determination procedure on 27.07.2016. Regarding the allegation of dual registration, the learned counsel contended that the operation of Rule 3(3)(3) of the PCPNDT Rules, 1996, which limits the registration of a medical practitioner to a maximum of two clinics, had been stayed by various High Courts. He placed reliance on the interim directions of the Division Bench of this Court in CWP No. 26741 of 2017 (Dr. Amardeep Singh and another v. Union of India and others) dated 13.09.2018 and learned counsel contended that there was no bar in registration at two places. He prayed that the petition be allowed and the petitioner be discharged.

10. Learned State counsel contended that the revisional Court has rightly set aside the discharge order passed by learned trial Court and submitted that at the stage of framing of charge, the trial Court is not required to conduct a mini-trial or weigh the evidence as a gospel truth. Learned counsel argued that since the petitioner's name was officially registered as an operator on the panel of Janta Diagnostic Centre on the date of the raid, and had not been struck off, a prima facie case is made out to proceed against him as dual registration across two different districts is a violation of the statutory provisions, which warrants trial.

11. The moot point to be decided is as to whether the existence presence of petitioner's name on the registration panel of Janta Diagnostic Centre, Hansi, on the date of the raid, in the absence of his physical presence, active participation, or conspiracy, can attract criminal liability under the PCPNDT Act or the IPC, and whether dual registration in two



separate districts constitutes a punishable offence under the Act. To address this, we must examine Rule 3(3)(3) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short 'PCPNDT Rules'), which is reproduced below:

“Rule 3(3)(3) of PCPNDT Rules, 1996:-

Each medical practitioner qualified under the Act to conduct ultrasonography in a genetic clinic, ultrasound clinic or imaging centre shall be permitted to be registered with a maximum of two such clinics/centres within a district. The consulting hours for such medical practitioner shall be clearly specified by each clinic/centre.”

12. A bare perusal of Rule 3(3)(3) shows that the restriction on registration in maximum of two diagnostic centres is specifically confined to centres "within a district". There is no statutory bar or restriction under Rule 3(3)(3) or any other provision of the PCPNDT Rules preventing a qualified medical practitioner from being registered at two or more diagnostic centres situated in two separate districts or different States. In the present case, the petitioner was registered at Janta Diagnostic Centre in District Hisar and Health Map Diagnostic, Civil Hospital in District Gurgaon. Since these centres are situated in two separate districts, the registration does not violate the literal mandate of Rule 3(3)(3) of the PCPNDT Rules.

13. Even otherwise, the constitutional validity of Rule 3(3)(3) was challenged before various High Courts, and its operation has been stayed. The High Court of Bombay in Writ Petition Lodging No. 1829 of 2012, Dr. Rajeev Vasant Zankar v. Union of India and others, vide order



dated 20.07.2012 granted an ad-interim stay on the operation of Rule 3(3) (3). Subsequently, the Division Bench of the High Court of Delhi in Indian Radiological and Imaging Association (IRIA) v. Union of India (W.P.(C) No. 4009 of 2012) vide order dated 19.09.2012 directed that the stay on the application of Rule 3(3)(3) be communicated to all States across the country. Following the same, a Division Bench of this Court in CWP No. 26741 of 2017 (Dr. Amardeep Singh and another v. Union of India and others) vide order dated 13.09.2018 granted interim relief in identical terms, staying the operation of Rule 3(3)(3). Consequently, on the date of the revisional Court's order, the restriction under Rule 3(3)(3) was not legally enforceable.

14. It is settled law that a prima facie case requires some material of a substantive nature linking the accused to the offence, and mere administrative omissions or delayed updates of registration panels by the clinic owner or the health department cannot be elevated to the status of a criminal offence or a conspiracy. To bring an accused within the bracket of criminal prosecution under Section 23 of the PCPNDT Act or Section 420 IPC, the prosecution must establish a prima facie active role, physical participation, or meeting of minds (conspiracy) in the commission of the alleged illegal sex determination. Rather, the petitioner has not played any role in committing the offence as he was not present at the diagnostic centre at the time of raid.

15. As the petitioner's name continued to remain on the panel of the clinic due to an administrative delay in striking it off after his



departure in the year 2012, no criminal intent or conspiracy can be attributed to him for an incident occurring in 2016. A medical practitioner cannot be held criminally liable for the illegal acts of a diagnostic centre's owner or staff simply because of a past registration that was not got cancelled by the clinic or the appropriate authority.

16. Under these circumstances, there is no prima facie case, against the petitioner for the commission of offences under the PCPNDT Act or the IPC. Learned trial Court had carefully perused the challan and the accompanying documents and rightly discharged the petitioner vide order dated 12.04.2017. However, the learned revisional Court failed to appreciate these vital facts and committed a grave error by reversing a well-reasoned order on purely technical and legally unsustainable grounds. The impugned order dated 29.10.2018 passed by the learned Additional Sessions Judge, Hisar, is unsustainable in the eyes of law and is liable to be set aside.

17. As a result of the aforesaid discussion, the present revision petition is allowed. The impugned order dated 29.10.2018 passed by the Court of learned Additional Sessions Judge, Hisar, is hereby set aside, and the order of discharge dated 12.04.2017 passed by the Court of learned Sub Divisional Judicial Magistrate, Hansi, is restored.

18. Pending miscellaneous application(s), if any, shall also stand disposed of.

03.07.2026

Priyanka Thakur

Whether speaking/reasoned
Whether Reportable

(YASHVIR SINGH RATHOR)
JUDGE

Yes/No
Yes/No