Neutral Citation No. - 2024:AHC:159207

HIGH COURT OF JUDICATURE AT ALLAHABAD

*****

A.F.R

Judgement Reserved on 22.08.2024

Judgement Delivered on 30.09.2024

Court No. - 79

Case :- APPLICATION U/S 482 No. - 6753 of 2019

Applicant :- Dr. Brij Pal Singh
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Syed Mohammad Abbas Abdy
Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri S.M.A. Abdy, learned counsel for the applicant and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning order dated 02.01.2018 as well as the entire proceedings of Criminal Case No. 60 of 2018, arising out of Case Crime No. 0628 of 2017 u/S 315, 511 I.P.C. and under Sections 4/5(2)6(a)/23/25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred as, 'the PC&PNDT Act'), P.S.- Kotwali Shahar, District- Bulandshahar, pending in the court of learned Chief Judicial Magistrate, Bulandshahar.

BRIEF FACTS

3. The brief facts of the case are that on 14.3.2017, the Tehsildar Khurja,

District- Bulandshahar submitted a written report to the police station Kotwali Nagar stating therein that the District Magistrate-Bulandshahar has received information from the secret informer that in Sobha Ram Hospital, the sex identification of the foetus of the pregnant women is being done with the object to prevent the female child being born alive and if any pregnant women is sent as decoy customer then the doctors of the said hospital and the persons associated with the doctor can be caught red handed. On such secret information, the District Appropriate Authority (PC&PNDT), District-Bulandshahar authorised the Tehsildar Khurja to conduct the required proceedings. For the aforesaid purpose, a Special Action Team was constituted by nominating Subhash Singh, Sub-Inspector, P.S.-Kotwali Nagar, District-Bulandshahar along with the Tehsildar.

4. In compliance of the aforesaid order, the said Tehsildar called the said Sub-Inspector along with two constables and one lady constable in plain clothes and the team met at the *Kaala aam* crossing and in the process the decoy customer, the lady constable Preeti along with her decoy husband, Sanjay Kaushik also came there and were informed by the Tehsildar about the action to be taken. Then the decoy customer, lady constable Preeti consented therefor and then the Tehsildar handed over Rs. 11,000/- (5 x Rs. 2000/- Notes and 2x Rs. 500/- Notes) to the said decoy customer and as per the planning all of them went towards the Sobha Ram Hospital and the decoy customer Preeti and her decoy husband Sanjay were sent to Sobha Ram Hospital for the sex identification of the foetus. After sometime, Sanjay Kaushik came back and told that near the gate of the hospital two persons were standing and when he disclosed the cause of their arrival, those persons informed him that they are known to the doctor and they will get the sex identification of the foetus done through the doctor. Both the aforesaid persons disclosed their name as Kallan and Sanjeev. He further said that these persons disclosed the expense to be incurred in such examination by the doctor and then both of them went to talk to the doctor and a deal for Rs.

9,000/- was fixed as charge for such examination. He further told that out of Rs. 11,000/- given to said Kallan, Rs. 2,000/- were returned and Rs. 9,000/- was given to decoy customer, constable Preeti, who has gone inside for examination by the doctor and the doctor is doing the sex identification of the foetus. Saying so, the said Sanjay Kaushik returned the note of Rs. 2,000/-. On such intimation, the Tehsildar had reason to believe that doctors of Sobha Ram Hospital are conducting the sex identification of foetus by taking the customer through their brokers.

5. On such information, Tehsildar along with his team came near the gate of the hospital and waited for the return of the decoy customer, Preeti who came from the hospital after sometime and informed that sex identification of the foetus in her womb has been done by the doctor and the doctor has told her that the foetus is a girl child. She further stated that the doctor has not entered her name or address in any of the register nor any receipt was given and she informed that two persons standing outside the hospital are the agents of the said doctor. On such information, the police team came along with the Tehsildar, arrested the aforesaid two persons and both of them were searched and one of them disclosed his name as Jitendra @ Satyaprakash @ Kallan S/o Sobhraj Sharma resident of House No. 26, Brahmlok Colony, P.S. Kotwali Nagar, District-Bulandshahar and on search Rs. 2,000/- note, which was given to the decoy customer was recovered from right side pocket of his pant. The other person disclosed his name as Sanjeev S/o Rajendra Pal resident of Village Chandpur, P.S. Kotwali Nagar, District-Bulandshahar and on search Rs. 2,000/- note was recovered from right side pocket of his jeans. On enquiry from both of them, they told that the lady, who came for sex identification of the foetus has given Rs. 9,000/- out of which they have received Rs. 2,000/- each as commission from the doctor and Rs. 5,000/- is kept by the doctor himself. Taking immediate action along with the police team and the two accused persons, they went to the ultrasound room and the person, who was present there was interrogated and he disclosed his name to be Dr. Brij Pal Singh S/o Late Sobha Ram resident

of Sobha Ram Hospital Bhund, P.S.-Kotwali Nagar, District-Bulandshahar and on search Rs. 5,000/- was found on the back pocket of his pant. The notes which were recovered were the same, which were given to the decoy customer Preeti by the Tehsildar. The said seized notes were kept in separate envelope and were sealed. The accused persons were informed that they have committed an offence under Section 4, 5, 6, 23 and 25 of the PC & PNDT Act and under Section 315/511 of the I.P.C. and then they were arrested by the police team. The Sonography machine, sonography probe, transvaginal probe and one printer of make Sony was seized and sealed on the spot and in the process the persons present there were asked to be witness of the said seizure, however, they refused to become witness and in view thereof, the arrest memo and seizure memo were prepared. The instant FIR was written by S.I. Subhash Singh on the dictation of Tehsildar and all the members of the police team have signed as witness to the said incident and a copy of the said report was also given to them. On such written report, the Case Crime No. 0628 of 2017 was registered against the applicant herein as well as two other accused persons.

6. After the registration of FIR, the police has investigated the matter and thereupon submitted the charge sheet on 6.8.2017 before the Magistrate, whereupon the Chief Judicial Magistrate, Bulandshahar has taken cognizance on the said charge sheet on 2.1.2018 and Case No. 60 of 2018 was registered. Hence, the instant application under Section 482 Cr.P.C. has been filed by the applicant- Dr. Brij Pal Singh, seeking quashing of the entire proceedings of the aforesaid criminal case along with summoning order dated 2.1.2018.

SUBMISSIONS OF APPLICANT

7. Learned counsel for the applicant submits that as per the mandate of Section 28 of the PC & PNDT Act, no court can take cognizance of an offence under this Act, except on the complaint filed by the appropriate authority. Therefore, the impugned summoning order dated 02.01.2018, based on an F.I.R. lodged by the Tehsildar, Khurja, Bulandshahar and

charge sheet submitted by the police, is against the provisions of Section 28 of the PC & PNDT Act, as the said Tehsildar is not the appropriate authority within the meaning of Section 28 of the PC & PNDT Act. He submits that in view of Section 17 of the PC&PNDT Act, the appropriate authority is the District Magistrate concerned and not the Tehsildar. Therefore, no cognizance could have been taken in the instant case by the court concerned. Therefore, he has prayed for quashing of the entire proceedings of the instant case.

8. In support of his submissions, learned counsel for the applicant has relied upon the judgement dated 22.3.2024 of the Co-ordinate Bench of this Court in the case of ***Dr. Vinod Kumar Bassi vs. The State of U.P. and Anr.*** passed in ***Application U/S 482 Cr.P.C. 2998 of 2014, 2024 SCC OnLine All 778,*** wherein a complaint case was lodged by the Additional Chief Medical Officer, who was not the appropriate authority. In view thereof, the proceedings in the said case were quashed. Learned counsel for the applicant further submits that even the appropriate authority under the PC & PNDT Act is not competent to lodge the F.I.R., rather the complaint case has to be filed by appropriate authority in view of Section 28 of the PC&PNDT Act. However, in the instant case, the F.I.R. has been lodged by the Tehsildar, who claims in the F.I.R. that the Appropriate Authority i.e., District Magistrate, has authorised him to carry out the search and seizure and take action on the information received by the Appropriate Authority.

9. Learned counsel for the applicant has further relied upon the provisions of Section 30 of the PC & PNDT Act that no search and seizure could have been done by a person other than the Appropriate Authority or any other officer authorized in this behalf by the Central Government or the State Government as the case may be.

SUBMISSIONS OF A.G.A.

10. *Per contra*, Sri Pankaj Srivastava, learned A.G.A for State relying upon the judgement dated 21.02.2017 of the Division Bench of this Court

passed in ***Criminal Misc. Writ Petition No. 2085 of 2017 (Dr. Rahul Malik vs. State of U.P. and 3 Ors.)*** submits that there is no bar in registration of the F.I.R. and investigation thereof by the police for the offences under the PC & PNDT Act. Therefore, there is no illegality in the process adopted in the instant case. He further submits that once the FIR was lodged by the person, authorised by the Appropriate Authority, which was investigated by the police authorities and thereupon charge-sheet was filed, on which the cognizance is taken, there cannot be any illegality. The FIR lodged by person authorised by the Appropriate Authority is sufficient compliance of Section 28 of the PC & PNDT Act. Thus, he submits that the applicant herein was caught red handed and a *prima facie* case has been made out, therefore, no interference is called for in the instant case, while exercising the powers under section 482 of the Criminal Procedure Code as such powers are can be exercised very sparingly in rarest of rare cases. Hence, he prayed for dismissal of the instant case.

OBJECT OF THE ACT

11. Before considering the case on merits, it would be relevant to briefly understand the historical background of the PC & PNDT Act as well as the objectives, which it wants to achieve and the scheme of the Act with regard to the prosecution of the offence under the Act. In the year 1994, the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted by the Parliament and it was brought into force on 1.1.1996. By way of Amendment in the year 2003, the title of the Act was amended as the Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act. The circumstances, which led to the enactment of the PC & PNDT Act is summarised in the '*introduction*' to the Act itself, which reads as under:-

> *"In the recent past Pre-natal Diagnostic Centres sprang up in the urban areas of the country using pre-natal diagnostic techniques for determination of sex of the foetus. Such centres became very popular and their growth was tremendous as the female child is not welcomed with open arms in most of the Indian families. The result was that such centres became centres of female foeticide. Such abuse of the technique is against the female sex and affects the dignity*

and status of women. Various Organisations working for the welfare and uplift of the women raised their heads against such an abuse. ***It was considered necessary to bring out a legislation to regulate the use of, and to provide deterrent punishment to stop the misuse of, such techniques.*** *The matter was discussed in Parliament and the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill, 1991 was introduced in the Lok Sabha. The Lok Sabha after discussions adopted a motion for reference of the said Bill to a Joint Committee of both the Houses of Parliament in September, 1991. The Joint Committee presented its report in December, 1992 and on the basis of the recommendations of the Committee, the Bill was reintroduced in the Parliament."*

12. The background and the need of such Act was arrived due to the advancement in the medical technology which was capable of determination of gender of a foetus before birth, which came into existence in the late 1970s and 80s and due to availability of such technology there was widespread practice of sex-selective abortions, which in long term started to disbalance the birth ratio of male and female child and such technology has led to female foeticide, which had deep social and cultural impacts and in the long run it may disturb the existence of human race itself, if not regulated in time. The intention of the legislators behind enacting any Act can be well understood from the 'Statement of objects and reasons' of the said Act. The Statement of objects and reasons are the indicative of the goal, which such Act wants to achieve. To understand the same with regard to the PC&PNDT Act, the Statement of objects and reasons of the same is being reproduced below:-

"It is proposed to ***prohibit*** *pre-natal diagnostic techniques for* ***determination of sex of the foetus leading to female foeticide.*** *Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation is required* ***to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.***

The Bill, inter alia, provides for:-

(i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;

(ii) ***prohibition of advertisement of pre-natal*** *diagnostic techniques for detection or determination of sex;*

(iii) ***permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders****;*

(iv) ***permitting the use of such techniques only under certain conditions by the registered institutions; and***

(v) ***punishment for violation of the provisions of the proposed legislation***.

2. The Bill seeks to achieve the above objectives."

13. Therefore, the main objective of the Act is to prohibit and regulate the misuse of medical advancement with regard to pre-natal diagnostic technique for determination of sex of the foetus, which ultimately leads to female foeticide. The object of the PC&PNDT Act can also be understood from its long title which reads as "The Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994". By the Amendment in the PC&PNDT Act in 2003 some provisions were included which are more stringent to ensure better implementation of the Act.

SCHEME OF THE ACT

14. As per the definition of "Appropriate Authority" in Section 2(a), the Appropriate Authority means the Appropriate Authority appointed under Section 17 of the PC&PNDT Act. Section 2(b) defines "foetus" which means a human organism during the period of its development beginning on the fifty-seventh day following fertilization or creation, excluding any time in which its development has been suspended, and ending at the birth. Section 2(i) defines the "pre-natal diagnostic procedures" which means all gynaecological or obstetrical or medical procedures. Section 2(j) defines "pre-natal diagnostic techniques. Section 2(o) defines "Sex Selection", which reads as under:-

*"**2**(o) "sex selection" includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex."*

15. Section 3 of the PC & PNDT Act provides for the 'Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics'. Section 3A prohibits the sex-selection and the same reads as under:-

*"**3A. Prohibition of sex-selection.**-No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them."*

16. Section 3B prohibits the sale of ultrasound machine, etc., to persons,

laboratories, clinics, etc., not registered under the PC & PNDT Act.

17. Chapter III of the PC & PNDT Act provides for regulation of pre-natal diagnostic techniques. Section 4 deals with Regulation of pre-natal diagnostic techniques, Section 5 provides for prior consent of the pregnant woman before undergoing any pre-natal diagnostic techniques and prohibits the communication of sex of the foetus. For ready reference, Section 5 of the PC & PNDT Act is reproduced below:-

> *"**5. Written consent of pregnant woman and prohibition of communicating the sex of foetus.-**(1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless—*
>
> *(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;*
>
> *(b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and*
>
> *(c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.*
>
> *(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner. "*

18. Section 6 prohibits the determination of sex and the same is also reproduced herein:-

> *"**6. Determination of sex prohibited.—**On and from the commencement of this Act,—*
>
> *(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;*
>
> *(b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus;*
>
> *(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception."*

19. Chapter IV of the PC & PNDT Act deals with the constitution of the Central Supervisory Board and procedures with regard to meeting of the Board, etc., filling of the vacancies, appointment of all officers and other employees of the Board, eligibility and disqualifications and the functions of the Board. Section 16A deals with the Constitution of State Supervisory Board and Union Territory Supervisory Board. Section 17

under Chapter V of the PC & PNDT Act deals with the appointment of the Appropriate Authority and Advisory Committee, which reads as under:-

> ***"17. Appropriate Authority and Advisory Committee****.—(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.*
>
> *(2) The* ***State Government*** *shall appoint, by notification in the Official Gazette,* ***one or more Appropriate Authorities*** *for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.*
>
> *(3) The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2)* ***shall be****,—*
>
> *(a) when appointed* ***for the whole of the State*** *or the Union territory, consisting of the following three members:—*
>
> *(i) an officer of or above the rank of the* ***Joint Director of Health and Family Welfare—Chairperson;***
>
> *(ii) an* ***eminent woman representing women's organization****; and*
>
> *(iii) an* ***officer of Law Department of the State*** *or the Union territory concerned:*
>
> *Provided that it shall be the duty of the State or the Union territory concerned to constitute multimember State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:*
>
> *Provided further that any vacancy occurring therein shall be filled within three months of that occurrence.*
>
> *(b) when appointed for* ***any part of the State*** *or the Union territory, of such other rank as the State Government or the Central Government, as the case may be,* ***may deem fit****.*
>
> *(4)* ***The Appropriate Authority shall have the following functions****, namely:—*
>
> *(a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;*
>
> *(b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;*
>
> *(c)* ***to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action****;*
>
> *(d) to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;*
>
> *(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 pre-natal determination of sex;*
>
> *(g) to supervise the implementation of the provisions of the Act and rules;*

(h) to recommend to the Board 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, obstericians, paediatricians*** *and* ***medical geneticists****;*

(b) one ***legal expert****;*

(c) one ***officer to represent the department dealing with information and publicity of the State Government*** *or the Union territory, as the case may be;*

(d) three ***eminent social workers*** *of whom not less than one shall be from amongst* ***representatives of women's organisations****.*

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

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

Provided that the period intervening between any two meetings shall not exceed the prescribed period.

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

20. Sub-section (1) of Section 17 empowers the Central Government to appoint one or more Appropriate authorities for each of the Union territories for the purpose of this Act. Sub-section (2) of Section 17 empowers the State Government to appoint, by notification in the official Gazette, one or more Appropriate Authorities for the whole or part of the State having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. Sub-section (3) of Section 17 deals with the eligibility as to who can be appointed as Appropriate Authorities. Sub-section (4) of Section 17 deals with the functions of the Appropriate Authority. Section 17(4)(c) empowers the Appropriate Authority to investigate the complaints received by it for any breach of the provisions of the Act or the Rules. Section 17(4)(e) empowers the Appropriate Authority to take appropriate legal action against use of any

sex selection techniques, either suo-motu or on information received and to carry out independent investigation. Section 17(4)(i) directs that after completion of investigation, the Appropriate Authority shall act on the recommendation of the Advisory Committee constituted under Section 17(5) of the Act. Sub-section (5) empowers the Central Government or the State Government, as the case may be, to constitute a Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its function and shall appoint one of the members of such Advisory Committee as Chairman thereof. Sub-section (7) prohibits the person, who has been associated with the determination of sex or sex-selection shall not be appointed as member of the Advisory Committee. Sub-section (8) of Section 17 provides the procedure with regard to functioning of the Advisory Committee and sub-section (9) empowers the concerned Government to regulate the terms and conditions of the Advisory Committee. Section 17A which was introduced by way of Amendment in 2003 describes the powers of the Appropriate Authority which are as follows:-

> *"**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 pre-natal sex determination; and*
>
> *d) **any other matter which may be prescribed**."*

21. Thus, Section 17A gives teeth to the existing power of the Appropriate Authority. Now while investigating any matter in view of Section 17(4) of the Act, the Appropriate Authority can summon any person, who has any information regarding the violation of the provisions of the Act or the Rules and direct for production of documents and can issue search warrant for any place, suspected to be indulging in any sex-selection techniques or pre-natal sex determination. Further powers may also be assigned to the Appropriate Authorities by the appropriate

Government or by the Rules.

22. Chapter VI of the PC & PNDT Act deals with the 'Registration of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics'. Section 20 of the PC & PNDT Act deals with cancellation or suspension of registration and the same reads as under:-

> ***"20. Cancellation or suspension of registration.-****(1)* ***The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.***
>
> *(2) If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.*
>
> *(3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is, of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing,* ***suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).****"*

23. Chapter VII of the PC & PNDT Act deals with 'Offences and Penalties' and Section 23 thereof is reproduced below:-

> *"****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."

24. Section 24 of the PC & PNDT Act which was amended in 2003 protects the pregnant women from prosecution under the Act as the presumption is raised that unless proved otherwise, it shall be presumed that the pregnant women was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of Section 4 and such person shall be liable for abetment of offence under sub-section (3) of Section 23 and shall be punished for such offence. Section 25 provides for penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided. Section 26 deals with the offence committed by the companies. Section 27 makes the offence under the PC & PNDT Act to be cognizable, non-bailable and non-compoundable and the same reads as under:-

*"**27. Offence to be cognizable, non-bailable and non-compoundable**.-Every offence under this Act shall be cognizable, non-bailable and non-compoundable."*

25. Section 28 of the PC & PNDT Act deals with the cognizance of offence which is reproduced herein:-

*"**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."

26. From the perusal of sub-section (1) of Section 28, the Courts are

prohibited from taking cognizance of any offence under the PC & PNDT Act except on a complaint made by (i) Appropriate Authority concerned; (ii) any officer authorised in this behalf by the Central Government or the State Government, as the case may be; (iii) any officer authorised in this behalf by the Appropriate Authority; and (iv) a person who has given notice of not less than 15 days of his intention to make a complaint to the court. For this purpose, it has been explained that the person shall include a social organisation as well. Sub-section (2) of Section 28 mandates that only a Metropolitan Magistrate or a Judicial Magistrate of the first class shall be the competent court to try the offence punishable under the PC & PNDT Act. Sub-section (3) of Section 28 provides that when a complaint is made by a person, who has given the notice for filing the complaint to the Appropriate Authority and on the request made by such person to the court, the court can direct the Appropriate Authority to produce all relevant records, which is in its possession.

27. Chapter VIII deals with 'Miscellaneous' provisions. Section 29 deals with the 'Maintenance of records', Section 30 deals with the powers of the Appropriate Authority or the authorized person to search and seize records of any such clinic, where violations of the provisions of the PC & PNDT Act are being made and sub-section (2) of Section 30 also makes the provisions of the Cr.P.C. applicable with regard to the searches and seizures. Section 30 of the Act is also reproduced herein.

> ***"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.*
>
> *(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."*

28. Section 31 of the PC & PNDT Act protects the officers who have

acted in good faith under the provisions of this Act. Section 31A which has been introduced by way of Amendment in 2003 empowers the Central Government to make such provisions with regard to necessity or which may be experienced for removing of any difficulty. Though such powers were limited for a period of 3 years from the amendment. Section 32 of the Act empowers the Central Government to make rules to regulate the procedures. Section 33 empowers the advisory boards to frame the regulations with the prior sanction of the Central Government. Any such rules and regulations made under the PC & PNDT Act were directed to be laid before the Parliament for its approval as per Section 34.

29. In exercise of the powers under section 32 of the PC & PNDT Act, the Central Government has framed the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. Rule 12 of the Rules, 1996 provides for entire mechanism for search and seizure as under:

> *"**12. Procedure for search and seizure.**-(1) The Appropriate Authority or any officer authorised in this behalf may enter and search at all reasonable times any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of t**wo or more independent witnesses for the purposes of search and examination** of any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seal and seize the same **if there is reason to believe that** it may furnish evidence of commission of an offence punishable under the Act.*
>
> *Explanation:-In these Rules-*
>
> *(1) 'Genetic Laboratory/Genetic Clinic/Genetic Counselling Centre' would include an ultrasound centre/imaging centre/nursing home/hospital/institute or any other place, by whatever name called, where any of the machines or equipments capable of selection of sex before or after conception or performing any procedure technique or test for pre-natal detection of sex of foetus, is used;*
>
> *(2) 'material object' would include records, machines and equipments; and*
>
> *(3) 'seize' and 'seizure' would include 'seal' and 'sealing' respectively.*
>
> *(2) A list of any document, record, register, book, pamphlet, advertisement or any other material object found in the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and seized shall be prepared in duplicate at the place of effecting the seizure. Both copies of such list shall be signed on every page by the Appropriate Authority or the officer authorised in this behalf and by the witnesses to the seizure:*
>
> *Provided that the list may be prepared, in the presence of the witnesses, at a place other than the place of seizure if, for reasons to be recorded in writing, it is not practicable to make the list at the place of affection the seizure.*

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

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

(4) If any material object seized is perishable in nature, the Appropriate Authority, or the officer authorised in this behalf shall make arrangements promptly for sealing, identification and preservation of the material object and also convey it to a facility for analysis or test, if analysis or test be required: Provided that the refrigerator or other equipment used by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic for preserving such perishable material object may be sealed until such time as arrangements can be made for safe removal of such perishable material object and in such eventuality, mention of keeping the material object seized, on the premises of the Genetic counselling Centre or Genetic Laboratory or Genetic Clinic shall be made in the list of seizure.

(5) In the case of non-completion of search and seizure operation, the Appropriate Authority or the officer authorized in this behalf may make arrangements, by way of mounting a guard or sealing of the premises of the Genetic Com 1 selling Centre, Genetic Laboratory or Genetic Clinic, for safe keeping, listing and removal of documents, records, book or any other material object to be seized, and to prevent any tampering with such documents, records, books or any other material object."

30. Rule 18A which has been introduced by the amendment in the year 2014, which is relevant for the purpose of the controversy involved in the instant case and which deals with the code of conduct to be observed by the Appropriate Authority is being reproduced herein:-

"18A. Code of Conduct to be observed by Appropriate Authorities.- *(1) All Appropriate Authority including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following general code of conduct, namely:-*

(i) maintain dignity, and integrity at all times;

(ii) observe and implement the provisions of the Act and Rules in a balanced and standardised manner in the course of their work;

(iii) conduct their work in a just manner without any bias or a perceived presumption of guilt;

(iv) refrain from making any comments which demean individuals on the basis of gender, race, religion;

(v) delegate his or her powers by administrative order to any authorised officer in his or her absence and preserve the order of authorisation as documentary proof for further action.

(2) All the Appropriate Authorities including the State, District and Sub-district

notified under the Act, inter-alia, shall observe the following Conduct for

Advisory Committees, namely:-

(i) ensure that the re-constitution, functions and other relevant matters related to advisory committee shall be in accordance with the provisions of the ***Advisory Committee Rules, 1996****;*

(ii) ensure that a person who is the part of investigating machinery in cases under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994), shall not be nominated or appointed as a member of the Advisory Committee;

(iii) ensure that the process of filling up of vacancies in Advisory Committee shall start at least ninety days before the probable date of the occurrence of vacancy;

(iv) ensure that no person shall participate as a member or a legal expert of the Advisory Committee if he or she has conflict of interest;

(v) conduct frequent meetings of the Advisory Committee to expedite the decisions regarding renewal, cancellation and suspension of registration.

(3) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the ***following conduct for processing of complaint and investigation,*** *namely:-*

(i) ***maintain appropriate diaries in support of registration of each of the complaint or case under the Act;***

(ii) ***attend to all complaints and maintain transparency in the follow-up action of the complaint****s;*

(iii) ***investigate all the complaints within twenty-four hours of receipt of the complaint and complete the investigation within forty-eight hours of receipt of such complaint;***

(iv) ***as far as possible, not involve police for investigating cases under the Act as the cases under the Act are tried as complaint cases under the Code of Criminal Procedure, 1973 (2 of 1974).***

(4) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following conduct for registration and renewal of applications under the Act, namely:-

(i) dispose of the application for renewal and new registration within a period of seventy days from the date of receipt of application;

(ii) ensure that ***no application for fresh registration or renewal of registration is accepted if any case is pending in any court against the applicant for violation of any provision of the Act and the rules made thereunder.***

(5) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, ***shall*** *observe the following conduct for Legal Action, namely:*

(i) ensure that protection and expenses of witness shall be met from the registration amount collected;

(ii) ensure that all the notifications of the Government be produced in original in the court and a copy of the same be preserved:

(iii) ensure that while filing the cases, all the papers, records,

statements, evidence, panchnama and other material objects attached to the case file shall be in original;

(iv) ***suspend the certificate of registration in the course of taking legal action of seizure, and sealing of the facility****;*

(v) ensure that there shall be no violation of the provisions of the Medical Termination of Pregnancy Act, 1971 (34 of 1971) and the Rules made thereunder while implementing the provisions of the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996;

(vi) take immediate action for filing appeal, revision or other proceeding in higher courts in case of order of acquittal within a period of thirty days but not later than fifteen days of receipt of the order of acquittal.

(6) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall submit quarterly progress report to the Government of India through State Government and maintain Form H for keeping me information of all the registrations made readily available.

(7) All the Appropriate Authorities including the State, District and Sub-district- notified under the Act, inter-alia, shall observe the following regulation of ultrasound equipments, namely:-

(i) monitor the sales and import of ultrasound machines including portable or buyback, assembled, gift, scrap or demo;

(ii) ensue regular quarterly reports from ultrasound manufacturers, dealers, wholesalers and retailers and any person dealing with the sales of ultrasound machines at the State level;

(iii) conduct periodical survey and audit of all the ultrasound machines sold and operating in the State or district to identify the unregistered machines;

(iv) ***file complaint against any owner of the unregistered ultrasound machine and against the seller of the unregistered ultrasound machine.***

(8) All the Appropriate Authorities including the State, District and Sub-district fied under the Act, inter-alia, shall observe the following conduct for inspection monitoring, namely:-

(i) conduct regular inspection of all the registered facilities once in every ninety days and shall preserve the inspection report as documentary evidence and a copy of the same be handed over to the owner of facility inspected and obtain acknowledgement in respect of the inspection;

(ii) place all the inspection reports once in three months before the Advisory Committee for follow up action;

(iii) maintain bimonthly progress report containing number of cases filed and persons convicted, registration made, suspended or cancelled, medical licenses cancelled, suspended, inspections conducted Advisory Committee meetings held I at the district level and quarterly progress report at the State level;

(iv) (a) procure the copy of the charges framed within seven days and in the case of doctors, the details of the charges framed shall be submitted within seven days of the receipt of copy of charges framed to

the State Medical Council;

(b) procure the certified copy of the order of conviction as soon as possible and in the case of conviction of the doctors, the certified copy of the order of conviction shall be submitted within seven days of the receipt of copy of the order of conviction.

(9) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall observe the following conduct for accountability, namely:-

(i) obtain prior sanction or approval of the Government of India for any resolution concerning the implementation of the provisions of the Act;

(ii) ***take action, if any, required under the Act and immediately on receipt of notice under clause (b) of sub-section (1) of section 28 of the Act and if he or she fails to do so, shall not be entitled for the protection under section 31 of the said Act and defend the case in his or her own capacity and at his or her own cost.***

(10) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter-alia, shall follow the following financial guidance, namely:-

(i) maintain a separate and independent bank account operated by two officers jointly, at all levels;

(ii) ensure transparency and adherence to standard Government financial norms for disbursement of money."

31. Sub-rule (3)(iv) of the rule 18A specifically prohibits that so far as possible the Appropriate Authority is directed not to involve police for investigation of the cases under the PC & PNDT Act as the cases under the Act are tried as complaint case under the Code of Criminal Procedure, 1973. Thus, from the comprehensive reading of the provisions of the PC & PNDT Act, the object of the PC & PNDT Act is regulatory in nature, which regulates and facilitates the use of technological advancement for the benefit of general public. However, it prohibits the use of technological advancement for the purposes of pre-natal or pre-conception sex-selection. In view of the provisions of Section 17(4)(c), (e) and (i), the Appropriate Authority after completion of investigation, is bound to take further action in the matter only the recommendation of the Advisory Committee constituted under Section 17(5) with regard to suspension or cancellation of registration. Rule 18A also empowers the Appropriate Authority to adopt various regulatory measures, without involving the police and even filing of the complaint before competent court under Section 28 is the last resort.

NOTIFICATIONS U/S 17(2) OF THE PC&PNDT ACT IN THE STATE OF UTTAR PRADESH

32. The State of Uttar Pradesh vide Gazette Notification dated 30.11.2007 has appointed the following persons as the Appropriate Authority for whole of the State, namely:-

(i) Dr. L.B. Prasad, Director General, Medical Health Services and National Programme, Monitoring and Evaluation, Directorate of Family Welfare, Uttar Pradesh- Chairperson.

(ii) Smt. Yashodhara, Kriti Resource Centre, Indira Nagar, Lucknow-Member

(iii) Shri J.N. Sinha, Special Secretary and Additional Legal Remembrance, Uttar Pradesh Government-Member

By the same Notification, it has been further provided that the District Magistrate of every district of the State shall be the appropriate authority under the PC & PNDT Act and it had been directed that such authority shall function under the administrative control of the Appropriate Authority for the State. It has been further provided in the notification that the District Magistrate, may nominate any Executive Magistrate of the District as his/her nominee to assist him/her in monitoring and implementation of the PC & PNDT Act, as deemed necessary.

33. Vide notification dated 31.07.2008 by modifying the previous notification, it has been provided that the Director General, Medical Health Services and National Programme, Monitoring and Evaluation, Directorate of Family Welfare, Uttar Pradesh by post shall be the chairman of the appropriate Authority for the State. Further, time-to-time, the members of the appropriate Authority for the State have been changed; however, the District Magistrate continues to be the Appropriate Authority for the particular district. Vide another notification dated 8.2.2013 in exercise of powers under Section 17 (3) of the PC & PNDT Act, the Sub- District Magistrate has also been appointed as the Appropriate Authority for the purposes of the Act, who shall act in

accordance with the provisions of the PC & PNDT Act under the administrative control of the District Appropriate Authority, which is the District Magistrate. In the aforesaid notification, it has been further provided that the Sub- District Magistrate may also take assistance of any other executive Magistrate for enforcement of the provisions of the PC & PNDT Act.

INTERPRETATION OF PROVISIONS OF PC&PNDT ACT BY DIFFERENT HIGH COURTS AND THE APEX COURT

(I) ALLAHABAD

34. In the case of ***Dr. Varsha Gautam vs. State of U.P. and others, ALJ 2006 (5) Page No. 221,*** while dealing with the provisions of Section 28 of the PC & PNDT Act, the Division Bench of this Court has held as under:-

> *"5. In our view the said prohibition does not apply at the stage of investigation and only relates to the stage when cognizance is sought to be taken by the concerned court. In this regard " In our view the said prohibition does not apply at the stage of investigation and only relates to the stage when cognizance is sought to be taken by the concerned court. In this regard when dealing with the question of a bar under Section 195 (1) (b) (ii), it has been held in M. Narayan Das v. State of Karnataka AIR 2004 SC 768, that the said bar only applies at the time when the court takes cognizance of an offence, and not at the stage of investigation. The material Paragraph 8 reads as follows:*
>
> *We are unable to accept the submissions made on behalf of the Respondents. Firstly it is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise there is no substance in the submission. The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of* ***State of Punjab v. Raj Singh****. In this case it has been that as follows :*
>
> *2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468, I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii), Cr. P. C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195, Cr. P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1), Cr. P. C; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance*

with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceedings in Court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195, Cr. P. C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b), Cr. P. C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340, Cr. P. C. The judgment of this Court in ***Gopala-krishna Menon v. Raja Ready*** *on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil Court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195, Cr. P.C.*

Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and. the Court would not be competent to take cognizance. However that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340, Criminal Procedure Code is followed. Thus no right of the Respondents, much less the right to file an appeal under Section 341, is affected. "

35. It will be relevant to note the observations of the Division Bench of this Court in the judgment dated 21.2.2017 passed in Criminal Misc. Writ Petition No. 2085 of 2017 ***(Dr. Rahul Malik vs. State of U.P. and Others)*** wherein the Division Bench relying upon the earlier judgement in the case of *Dr. Varsha Gautam* (Supra) has refused to quash the FIR holding that in view of the provisions of Section 27 of the PC & PNDT Act, every offence under this Act shall be a cognizable, non-bailable and non-compoundable offence. Thus, a non-bailable offence is reported to the police, the police has power to investigate and submit a report. The relevant paragraph of the said judgment is as under:-

“10. According to the Provision of Section 27 of the P.N.D.T. Act every offence under this Act shall be cognizable, non-bailable and non-compoundable.
11. From the perusal of the F.I.R. it is clear that prima facie cognizable offence is made out, therefore there is no ground to quash the F.I.R. and stay the arrest of petitioner. Petition has no force and it is accordingly, dismissed.”

36. The co-ordinate Bench of this Court in ***Dr. Vinod Kumar Bassi vs. State of U.P. And Another, 2024 SCC OnLine All 778***, where the

complaint under the PC & PNDT Act, 1994 was lodged by the Additional Chief Medical Officer, who was not authorised under Section 17(3) of the PC & PNDT Act, therefore, this Court has allowed the Application U/S 482 Cr.P.C. and has quashed the entire proceedings of the said complaint case lodged under the PC & PNDT Act by the Additional Chief Medical Officer, who was neither the Appropriate Authority nor the authorised person. The Court has observed as under:-

> ***"9.*** *When the Act of 1994 clearly provides that no Court shall take cognizance of any offence under the Act except on a complaint made by the appropriate authority, the court has no jurisdiction to take cognizance of any offence except on a complaint made by the appropriate authority. There can be no dispute against the fact that the Additional Chief Medical Officer is not an appropriate authority and he has no authority to file a complaint for any alleged offence committed under the provisions of the aforesaid Act and the Government Order. Therefore, as the complaint itself was incompetent, the trial court had no jurisdiction to take cognizance of the offences alleged in the complaint and to summon the applicant for being tried for the alleged offences."*

37. The Division Benches of this Court in ***Dr. Varsha Gautam (Supra)*** and ***Dr. Rahul Malik (Supra)*** have taken a view that though in view of the bar under Section 28 of the PC & PNDT Act, the Magistrate cannot take cognizance on the police report submitted after investigation of the offence under the Act, however, only for that reason the lodging of FIR and investigation thereof is not barred and on such observation, the Division Benches of this Court have refused to quash the FIR lodged for the offence under the provisions of the PC & PNDT Act.

(II) PUNJAB & HARYANA

38. A Division Bench of High Court of Punjab & Haryana on reference of following questions by Single Judge, vide judgement dated 4.12.2014 passed in ***Criminal Misc. No. 4211 of 2021 (Hardeep Singh vs. State of Haryana)*** has dealt with procedural aspects with regard to the offences under PC & PNDT Act :-

> *"(1) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?*
>
> *(2) Whether the report under Section 173 CrPC along with the complaint of an Appropriate Authority can be filed to the Court?*
>
> *(3) Whether no FIR can be lodged nor the offences can be investigated by the*

Police and only complaint by the Appropriate Authority directly to the Court lies?"

The Division Bench after considering the matter at length, returned the following findings:-

> *"In the circumstances, the questions as formulated in the reference are answered in the following manner, that:—*
>
> *(1)* ***FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.***
>
> *(2)* ***A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.***
>
> *(3)* ***FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court."***
>
> *(Emphasis supplied)*

39. In ***Criminal Misc. No. M-421 of 2021 - Dr. Aparna Singhal v. State of Haryana,*** learned Single Judge of Punjab & Haryana High Court following the Division Bench in Hardeep Singh has observed that FIR can be registered after completing the investigation the police would file a *kalandra* (Report) for the offences under the PC&PNDT Act before District Appropriate Authority and thereafter a complaint, alongwith a *kalandra* (police report), would be filed, on which cognizance can be taken by Magistrate. However, for the offence under the provisions of IPC, the police can file the report, directly on which cognizance can be taken.

40. The Punjab and Haryana High Court in ***Dr. Anant Ram vs. State of Haryana, 2022 SCC OnLine P&H 2284*** relying upon the judgement in ***Dr. Hardeep Singh (Supra)*** has taken a view that though magistrate is not competent to take cognizance on the police report submitted; therefore, if any investigation has been carried out, then such police report has to be handed over to the concerned Appropriate Authorities and only they may file the complaint along with the said report. There is no absolute bar for registration of FIR, however, the police officer on receipt of FIR is required to inform the officers of department, Health

and Family Welfare. The following observation would be relevant to note:-

> *"**17.** A perusal of 28 of the PNDT Act would show that it envisages that no Court is to take cognizance of offence under the Act except on a complaint made by the persons enumerated in clause (a) thereof. Besides, clause (b) envisages that a complaint may also be made by 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.* ***'Cognizance by Court' and 'investigation of offence' are two different things. Investigation precedes cognizance by Court. The stage of cognizance by Court would come only upon conclusion of investigation. Taking cognizance is function of Court whereas investigation is domain of police/investigating agency.*** *A Division Bench of this Court in its judgment dated 4.12.2014 rendered in Criminal Misc. No. M-4211 of 2021 - Hardeep Singh v. State of Haryana, has dealt with in detail the procedural aspects in respect of cases under PNDT Act. The judgment was delivered while considering the following issues which had been referred to a larger Bench by a Single Bench of this Court:—*
>
> > *"(1) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?*
> >
> > *(2) Whether the report under Section 173 CrPC along with the complaint of an Appropriate Authority can be filed to the Court?*
> >
> > *(3) Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?"*
>
> ***22. There is no dispute that in terms of Section 28 of the PNDT Act, it is only upon a complaint made by Appropriate Authority that a Court can take cognizance and not on the basis of a report under Section 173 Cr.P.C, as far as offences under PNDT Act are concerned****. As has been specifically stated in the reply filed by the State that a Kalandra is going to be filed by the Appropriate Authority in respect of offences under Sections 23, 3(1), 3(a), 4, 5(ii) and 6(b) of the PNDT Act, whereas the police has separately filed a chargesheet under 173 Cr.P.C. in respect of the offences under IPC only. As such, it cannot be said that there has been any violation of Section 28 of the PNDT Act.*
>
> *<u>Submission No. (vii)</u>*
>
> *(vii) that as per Rule 18A(3)(iv) of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996, framed in exercise of the powers conferred by section 32 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, the Appropriate Authority is not supposed to associate police for investigating case under PNDT Act.*
>
> ***23.*** *As already noticed above, while discussing submission no. (v), there is no absolute bar under PNDT Act against the police investigating a case, as evident from Rule 18-A(3)(iv) of the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. The said Rule reads as follows:—*
>
> > *(3) All the Appropriate Authorities including the State, District and Sub-district notified under the Act, inter alia, shall observe the following conduct*

for processing of complaint and investigation, namely:—

(i) maintain appropriate diaries in support of registration of each of the complaint or case under the Act;

(ii) attend to all complaints and maintain transparency in the follow-up action of the complaints;

(iii) investigate all the complaints within twenty four hours of receipt of the complaint and complete the investigation within fortyeight hours of receipt of such complaint;

(iv) ***as far as possible****, not involve police for investigating cases under the Act as the case under the Act are tried as complaint case under the Criminal Procedure Code, 1973 (2 of 1974).”*

24. No doubt, the aforesaid rule does suggest that ordinarily the police officers should not be associated for the purpose of investigating a case but the words ‘as far as possible’, as occuring in Rule 18-A(3)(iv) cannot be interpreted to mean an absolute bar against involvement of the police. Rather, it does show that there would be cases where police could be associated. *However, it goes without saying that* ***keeping in view the fact that offences under PNDT Act are committed using specialised equipment requiring technical knowledge, with which ordinary police would not be very familiar, even if commission of an offence under PNDT Act comes to notice of police, the officials of Department of Health and Family Welfare should be informed immediately****. As such, Rule 18A(3)(iv) cannot be made a ground for quashing of the FIR, particularly when no such absolute bar is provided in the PNDT Act, unlike the provisions of PMLA Act wherein a specific bar is envisaged in provisions of Section 45(1A) of the PMLA Act. The aforesaid submission being sans merit cannot be accepted.”*

(Emphasis supplied)

(III) DELHI

41. The Delhi High Court in the case of ***Manoj Krishan Ahuja vs. State of NCT of Delhi and Another, 2023 SCC OnLine Del 2303*** has held that though it is not specifically provided under the PC & PNDT Act that the Appropriate Authority can file the FIR after the preliminary inquiry, search and seizure, on a complaint received by them, the purpose of law cannot be defeated by quashing the FIR, where investigation also related to commission of cognizable offence under the PC&PNDT Act. The relevant paragraphs of the judgement is reproduced below:-

*“**32**. Having discussed the procedure contemplated under Section 28 of the Act in the preceding discussion, this Court notes that* ***the manner in which the cognizance was taken by the learned Trial Court upon a chargesheet is not the procedure envisaged under the PC&PNDT Act. In the present case, the complaint had to be filed by the concerned Appropriate Authority before the learned Trial Court as a complaint under Section 200 Cr. P.C. Since the cognizance has been taken on the chargesheet filed under Section 173 of Cr.***

P.C., it is clearly in the teeth of the bar under Section 28 of this Act which bars cognizance except upon receipt of complaint in the manner provided therein. *It is also the sine qua non for taking cognizance that the said Appropriate Authority or the person so authorised should be validly appointed.*

33*. During the course of arguments, learned APP for the State had also produced a copy of complaint filed by the District Appropriate Authority before the learned Trial Court, almost a year after the cognizance had been taken in the present case, to contend that the irregularity, if any, stood cured.*

34*. On the contrary, it has been brought to the notice of this Court that the complaint filed by the Appropriate Authority on 02.09.2020. was filed as a separate complaint case, which has been registered separately vide CT Case No. 3778/2020, pending before the same Trial Court.*

35*. In the considered opinion of this Court,* ***since Section 28 of the Act expressly prohibits taking of cognizance by the Courts in absence of a complaint made by Appropriate Authority or any other person authorised on its behalf, the complaint filed subsequently and registered and pending adjudication as per law under the Act cannot come to the rescue of the prosecution, more so since it will amount to prosecuting the same persons for same offences by two procedures prescribed under law i.e. by way of filing of a complaint case which was mandatory under this Act and on the basis of cognizance taken of a chargesheet which is prohibited under the Act.***

36*. In this case, this Court also takes note of* ***an order dated 15.07.2019. vide which the Appropriate Authority had granted 'sanction' under Section 28 to the police to prosecute accused no. 3 in the present FIR****. The relevant portion of said order reads as under:*

> *"With reference to letter no 1538/R-SHO/PS LAJPAT NAGAR/NEW DELHI dated-24/06/2019 regarding request for sanction under section-28 of PC&PNDT Act against the accused in the case filed vide FIR No-375/2018 at P.S. Sunlight Colony.*
>
> *By virtue of power granted under section 28.l(A) of PC & PNDT act, sanction is hereby conveyed to prosecute following accused in above mentioned case…*

39*. However, this Court holds that* ***technically, though the police had been authorised to prosecute the offenders, the same did not absolve the Appropriate Authority of their duty to file a complaint which was mandatory under the PC&PNDT Act under Section 28.*** *The Appropriate Authority, however, had filed a complaint in the Court on 02.09.2020. Therefore,* ***the cognizance in absence of complaint of the Appropriate Authority was barred in law****.*

52*. However, as observed in preceding discussion, the bar under Section 28 of the Act that cognizance can be taken only if a complaint of the Appropriate Authority is before the Trial Court is an absolute bar.* ***Therefore, though registration of the FIR is not expressly barred under the Act on the complaint made by Appropriate Authority, taking of cognizance only on the basis of chargesheet filed by the police on the basis of such a complaint is barred.*** *A similar view was also taken by the Division Bench of Hon'ble High Court of Punjab and Haryana in case of Hardeep Singh v. State of Haryana CRM No. M-4211/2014.*

53*. As held by Hon'ble Apex Court in Rasila S. Mehta v. Custodian, Nariman Bhavan, Mumbai, (2011) 6 SCC 220,* ***it is incumbent upon the Courts to interpret the statute in such a way that it protects and advances the purpose of enactment, and to not adopt any technical or restricted interpretation of***

the provisions which would negate the legislative intent and policy.

54. *Albeit, it is not specifically provided in the Act that the Appropriate Authority can get an FIR registered after their preliminary inquiry, search, seizure etc. or on a complaint received by them, the purpose of law cannot be defeated by quashing of FIRs where investigation also reveals commission of*

cognizable offence under the Act only due to lack of clarity in this regard in the Act. At the cost of repetition, it is to be noted that when the Appropriate Authority, as per mandate of PC&PNDT Act, informs the police about commission of offence under the Act, the police is duty bound and it is mandatory for them to register an FIR if commission of cognizable offence is made out."

(Emphasis supplied)

(IV) GUJARAT

42. Similarly, the Full Bench of Gujarat High Court in ***Suo Motu vs. State of Gujarat, 2008 SCC OnLine Guj 294,*** has held as under:-

"16. The provisions of section 28 clearly provide for taking cognizance of an offence under the Act only upon a complaint being made by any of the four categories of complainants, viz:

(1) the Appropriate Authority concerned;

(2) any officer authorised in that behalf by the Central Government or State Government;

(3) any officer authorised in that behalf by the Appropriate Authority; and

(4) a person, which includes a social organisation, who has given notice as prescribed in section (28)(1) (b).

17. ***Use of the words "Appropriate Authority" twice, at the beginning and end of clause (a) of sub-section (1) of section 28, clearly conveys that complaint could be made by an officer who is authorised in that behalf by the Central Government, the State Government or the Appropriate Authority, besides the Appropriate Authority itself. The power to delegate and authorise an officer to make a complaint is clearly conferred upon all the three authorities under the provisions of section 28, and therefore, a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in that behalf by the Appropriate Authority.*** *The first issue is answered accordingly. As seen earlier, the Act and the Rules made thereunder provide for an elaborate scheme to ensure proper implementation of the relevant legal provisions and the possible loop-holes in strict and full compliance are sought to be plugged by detailed provisions for maintenance and preservation of records. In order to fully operationalise the restrictions and injunctions contained in the Act in general and in sections 4, 5 and 6 in particular, to regulate the use of pre-natal diagnostic technique, to make the pregnant woman and the person conducting the prenatal diagnostic tests and procedures aware of the legal and other consequences and to prohibit determination of sex, the Rules prescribe the detailed forms in which records have to be maintained. Thus the Rules are made and forms are prescribed in aid of the Act and they are so important for implementation of the Act and for prosecution of the offenders, that any improper maintenance of such record is itself made equivalent to violation of the provisions of sections 5 and 6, by virtue of the proviso to sub-section (3) of*

section 4 of the Act. It must, however, be noted that the proviso would apply only in cases of ultrasonography conducted on a pregnant woman. And any deficiency or inaccuracy in the prescribed record would amount to contravention of the provisions of sections 5 and 6 unless and until contrary is proved by the person conducting such ultrasonography. The deeming provision is restricted to the cases of ultrasonography on pregnant women and the person conducting ultrasonography is, during the course of trial or other proceeding, entitled to prove that the provisions of sections 5 and 6 were, in fact, not violated.

19. Upon above analysis and appreciation of the scheme and provisions of the Act and Rules made thereunder, opinion on issues referred to the larger bench is as under:

(i) ***Under the provisions of section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("the PNDT Act"), a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in that behalf by the Appropriate Authority.***

(ii) The proviso to sub-section (3) of section 4 of the PNDT Act does not require that the complaint alleging inaccuracy or deficiency in maintaining record in the prescribed manner should also contain allegation of contravention of the provisions of section 5 or 6 of the PNDT Act.

(iii) In a case based upon allegation of deficiency or inaccuracy in maintenance of record in the prescribed manner as required under sub-section (3) of section 4 of the PNDT Act, the burden to prove that there was contravention of the provisions of section 5 or 6 does not lie upon the prosecution.

(iv) Deficiency or inaccuracy in filling Form F prescribed under Rule 9 of the Rules made under the PNDT Act, being a deficiency or inaccuracy in keeping record in the prescribed manner, it is not a procedural lapse but an independent offence amounting to contravention of the provisions of section 5 or 6 of the PNDT Act and has to be treated and tried accordingly. It does not, however, mean that each inaccuracy or deficiency in maintaining the requisite record may be as serious as violation of the provisions of section 5 or 6 of the Act and the Court would be justified, while imposing punishment upon conviction, in taking a lenient view in cases of only technical, formal or insignificant lapses in filling up the forms. For example, not maintaining the record of conducting ultrasonography on a pregnant woman at all or filling up incorrect particulars may be taken in all seriousness as if the provisions of section 5 or 6 were violated, but incomplete details of the full name and address of the pregnant woman may be treated leniently if her identity and address were otherwise mentioned in a manner sufficient to identify and trace her.

(v) The judgment in Dr. Manish C. Dave v. State of Gujarat reported in 2008 (1) GLH 475 stands overruled to the extent it is inconsistent with the above opinion. The references stand disposed accordingly."

(Emphasis supplied)

(V) BOMBAY

43. The Bombay High Court in the case of ***Dr. Sai vs. State of Maharashtra, (2016) SCC OnLine Bom 8812*** has held as under:

16. If we look into the provisions of PCPNDT Act, then u/s 28(1)(a) of the said

Act it is specifically provided that no Court shall take cognizance of an offence under the PCPNDT Act except on a complaint made by an Appropriate Authority i.e. the Authority notified u/s 17 of PCPNDT Act. The provision has been engrafted with an object that the provisions of the Said Act may not be misused and police have been deliberately kept out of the purview of initiating prosecution though the offences are made

cognizable, nonbailable and non-compoundable by virtue of Section 27 of the said Act. The entire process of taking legal action against the person violating the provisions of PCPNDT Act which includes investigation of complaint has been entrusted to Appropriate Authority. In order to empower the Appropriate Authority the powers to summon any person who is in possession of any information relating to violation of provisions of the Act and Rules made thereunder, production of any document or material object relating to possession of information relating to such violation including the powers of issuance of search warrant etc. are entrusted and conferred upon Appropriate Authority. *In general, the high ranking officer from the field of Medical have been notified as an Appropriate Authority to file such complaint.*

18. *Thus, if we read the provisions of sections 17, 17A and 28 of the said Act together, then the role of the Appropriate Authority is very important.* ***The Appropriate Authority has to act as an investigator to inquire into the allegations of violation of the PCPNDT Act and Rules thereunder either on the basis of complaint received as well as to act suo motu. The role of the Appropriate Authority is not just to receive the complaint and file the proceeding in the Court of law. Section 17(4)(c) specifically provides that, one of the function of the Appropriate Authority is to investigate the complaints of breach of provisions of the act and the rules made thereunder and take legal action.*** *Section 17(4)(e) provides that, the Appropriate Authority to take legal action against the use of any sex selection technique by any person at any place, suo motu or brought to to its notice or also to initiate independent investigation in such matter.* ***Thus, to investigate the complaints received against the persons violating the provisions of PCPNDT Act is the job of Appropriate Authority. Outcome of such investigation provides basis either to drop the proceeding or to initiate appropriate proceeding which includes initiation of criminal prosecution by filing complaint u/s 28 of PCPNDT Act.*** *Mere report or complaint or information received cannot be sole basis to prosecute the person.* ***If the complaint is inquired and investigated results into collection of evidence sufficient to prosecute the person for violation of the provisions of PCPNDT Act, then only criminal proceeding is expected to be filed u/s 28 of the PCPNDT Act. There appears to be specific legislative intent behind introducing Section 17-A in the PCPNDT Act (incorporated by amended act of 2003) to vest full-fledged powers of inquiry and Appropriate Authority to investigate the matter. Thus, the role of the Appropriate Authority is much more than the authority to file complaint.***

19. *In the light of role of the Appropriate Authority discussed as above, it was expected on the part of the Appropriate Authority to have investigated the information received in the form of inspection report from the Vigilance Squad to find out there was any violation of provisions of PCPNDT Act on the part of the petitioner. It was expected on the part of Appropriate Authority to have summoned the persons referred in the inspection report to verify as to whether the petitioner had complied with the requirement of obtaining written consent as contemplated under Section 5 r/w Rule 9 of the*

PCPNDT Act and there was any violation in observing the mandatory conditions. ***Simply certain lacunae, omission detected in the consent form could not be the basis to prosecute the person.*** *By exercising the powers u/s 17-A, certainly the Appropriate Authority could have summoned those persons, recorded their statement and conducted further investigation as deemed fit and proper to collect the evidence to sustain the prosecution in the Court of law……. The expected role of Appropriate Authority u/s*

17(4) of PCPNDT Act is to probe the matter and then to arrive at a proper decision as to whether prima facie case of violation of the provisions of the PCPNDT Act and Rules framed thereunder is made out or not. In the case of Dr. Uma Shankarrao Rachewad v. Appropriate Authority reported in 2012 Cri.L.J. 2634 decided by one of us (Coram : A.V. Nirgude, J.), dealing with the case more or less identical to the facts of the case, has observed in para 14 as under:

> *"14. In view of the discussion above, the case filed against the petitioner does not disclose prima facie case and therefore should fail. Before I conclude this judgment, I think I must also hold that when the Competent Authority visits a clinic for inspection, after inspection he should record statement of the person against whom he intends to file the case. In such statement, such person would get ample opportunity to put-forward his or her explanation. The Competent Authority under this Act, in my view, should consider each case on its merits, examine it meticulously, preferably with the help of a Legal Advisor and then file complaint in the Court. At least in this case, it appears that the necessary care was not taken and the case was filed hurriedly, without examining its strength."*
>
> *(Emphasis supplied)*

(VI) ORISSA

44. The High Court of Orissa in the case of ***Ramesh Chandra Naik v. State of Orissa, 2018 SCC OnLine Ori 480*** has held as under:-

> *"13. I shall first deal with the order of taking cognizance under sections 23 and 25 of the PCPNDT Act. Section 28 of the PCPNDT Act enumerates on what basis a Court can take cognizance of an offence under the Act and which Court is empowered to try the offence punishable under the Act.* ***Cognizance of an offence under the Act can be taken on the basis of a complaint made by the (i) Appropriate Authority; (ii) any officer authorized in that behalf by the Central Government or State Government and also (iii) any officer authorized in that behalf by the Appropriate Authority. It could also be taken on the basis of a complaint made by a person, who had given a 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.*** *The later situation would arise in a case where the Appropriate Authority had failed to initiate action even in spite of the notice of the person concerned. In the later situation, after the complaint is filed, the Court is empowered to direct the Appropriate Authority to make available copies of the relevant records in its possession to the person concerned If he makes such a demand before the Court. A Metropolitan Magistrate or a Judicial Magistrate of first class is empowered to try any offence punishable under the Act. The explanation contained under clause (b) of sub-section (1) of section 28 states that the term*

'person' includes a social organization. Therefore, the legislature in order to prevent the social evil has allowed any person to set the law in motion under the Act by approaching the Court after fulfilling the criteria laid down under clause (b) of sub-section (1). The word 'may' as it appears in sub-section (3) of section 28 of the PCPNDT Act gives discretion to the Court to decide whether

the complainant is entitled to the copies of the relevant records as sought for from the Appropriate Authority. Though the complainant has got right to demand the copies of the relevant records but he has no vested right to get the same. The word may cannot be interpreted as 'shall' or 'must'. The Court has to consider various factors including the right of privacy of an individual who is likely to be affected, the purpose and object of the legislation, the right of the person to receive the documents and the violation, if any, of the provisions of the Act and Rules.

17. The PCPNDT Act in section 28 lays down the restriction for a Court in taking cognizance of an offence under the Act except on a complaint being made by certain categories of authorities or any person after fulfilling certain criteria. As per section 2(d) of Cr. P.C., complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. In the explanation to section 2(d) of Cr. P.C., it lays down that a report made by a police officer in a case which discloses, after investigation, the commission of a noncognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant.

20. In view of the foregoing discussion, ***since cognizance of offences under sections 23 and 25 of the PCPNDT Act has been taken on the basis of the chargesheet submitted by police and not on the basis of a complaint petition as envisaged under section 28 of the PCPNDT Act, I am of the humble view that the learned Magistrate has committed illegality in taking cognizance of such offences' and therefore, the impugned order of taking cognizance of offences under sections 23 and 25 of the PCPNDT Act stands quashed.*** *The authorities mentioned under clause (a) of sub-section (1) of section 28 of the PCPNDT Act is at liberty to file complaint petition within four weeks from today before the appropriate Court for taking cognizance of offences under the PCPNDT Act which will be considered in accordance with law.*

21. ***So far as the other offences are concerned, after going through the case records-produced by the learned counsel for the State, the statements of witnesses and documents seized, I find prima facie case for commission of offences under sections 312, 315, 316, 109/34 of the Penal Code, 1860 and section 5(3)(4) of the MTP Act is clearly made Out. At the stage of taking cognizance of offence and issuance of process, the Magistrate has to be satisfied whether prima facie case is made out or not and whether there is sufficient ground for proceeding against the accused and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial. A detailed discussion of the merits or demerits of the case is not required to be gone into at that stage.*** *While exercising jurisdiction under section 482 of the Code, the High Court should not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, the accusation would not be sustained. That is the function of the trial Judge. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Section 482 of the Code is not an instrument handed over to an*

accused to short-circuit a legitimate prosecution and bring about its sudden death.

22. In view of the above, ***I find no perversity in the impugned order of taking cognizance so far as the offences under sections 312, 315, 316, 109/34 of the Penal Code, 1860 and section 5(3)(4) of the MTP Act and therefore, I am not***

inclined to interfere with the same. *Accordingly, the CRLMC application is allowed in part. The impugned order of taking cognizance of offences under sections 23 and 25 of the PCPNDT Act stands quashed. The order of taking cognizance of offences under sections 312, 315, 316, 109/34 of the Penal Code, 1860 and sections 5(3)(4) of the MTP Act is upheld. Since it is a case of the year 2007, the trial of the case be expedited. The MTP registers which have been received from the Court below be sent back in sealed cover to the concerned Court."*

(Emphasis supplied)

(VII) TELANGANA & ANDHRA PRADESH

45. The High Court for the State of Telangana in ***W.P. no. 18904 of 2018 (M/s Sujatha Scan Cente vs. The State of Telangana)*** has held as under:-

"7. Thus, ***these rules and regulations have passed only in exercise of power under Section 34 of the Act and in view of these guidelines referred above, any complaint against the person, who violated the provisions of the Act, compliant case alone is to be filed but not otherwise, as per guideline No.3 of the Code of Conduct for Appropriate Authorities under the PCPNDT Act that as far as possible, not to involve the police for investigating cases under the Act as the cases under the Act are tried as complaint cases, that means, the police are not competent to investigate into the offences under the Act since it depends upon the scientific investigation by the person having knowledge in the specific field i.e., doctors. The police cannot investigate into and collect any evidence in such cases.*** *Similarly,* ***in the guidelines for responding to complaint, it is made clear that FIR should be avoided under the PC & PNDT Act as there is no direct role of police in the Act.*** *This is in consonance with the rule 18A(3)(iv) of the Act. Therefore, unless those guidelines or regulations are placed before the Parliament in exercise of power under Section 34 of the Act, they will have no statutory force like any other enactment.*

8. It is the contention of the counsel for the petitioners that the rule is framed contrary to the power conferred on the Government under Section 32 of the Act. But this Court cannot decide the validity of the rule or guidelines while exercising power under Article 226 of the Constitution of India to quash the crime registered against the petitioners. The judgment of the Allahabad High Court relied upon by the respondent has no application to the present facts of the case for the reason that the Allahabad High Court did not consider these guidelines referred above. ***Therefore, registration of crime and investigation by the police is illegal since they are not competent and they have no role to play in the investigation.*** *Consequently, the proceedings in C.C.No.303 of 2018 of Banjara Hills Police Station, Hyderabad, are liable to be quashed."*

(Emphasis supplied)

(VII) CHATTISGARH

46. In the case of ***Dr. Amritlal Rohledar vs. State of Chhattisgarh, 2019 SCC OnLine Chh 137,*** *the Chhatisgarh High Court has observed as under:*

> *"**21**. In exercise of the powers conferred by Section 32 of the PCPNDT Act, the Central Government has framed rules known as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. Rule 12 of the Rules of 1996 provides for the procedure for search and seizure. Rule 18A provides the Code of Conduct to be observed by Appropriate Authorities including the State. Sub-rule (3) of Rule 18A provides that all the Appropriate Authorities including the State, District and Sub-district notified under the Act shall observe the following conduct for processing of complaint and investigation, namely:—*
>
> *(i) maintain appropriate diaries in support of registration of each of the complaint or case under the Act;*
>
> *(ii) attend to all complaints and maintain transparency in the follow-up action of the complaints;*
>
> *(iii) investigate all the complaints within twenty-four hours of receipt of the complaint and complete the investigation within forty-eight hours of receipt of such complaint;*
>
> *(iv) as far as possible, not involve police for investigating cases under the Act as the cases under the Act are tried as complaint cases under the Code of Criminal Procedure, 1973 (2 of 1974).*
>
> ***22**. Thus, **a focused perusal of the aforesaid provisions would show that a complete legislative scheme has been enacted for ensuring strict compliance of the stringent provisions of the PCPNDT Act directed against female foeticide and to stop the misuse of pre-natal diagnostic techniques and offence(s) under the Act has to be investigated only by the appropriate authority named in the Act read with the notification issued in that behalf and no power and jurisdiction has been conferred to the Station House Officer to investigate the offences under the Act though the offences under the Act have been made cognizable.***
>
> ***39**. In the matter of Rohtas v. State of Haryana, (1979) 4 SCC 229, the Supreme Court held that Section 5 of the CrPC carves out a clear exception to the provisions of trial of an offence under any special or local law for the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force.*
>
> ***40**. In the matter of Maru Ram v. Union of India, (1981) 1 SCC 107, the Supreme Court (Constitution Bench) with reference to Section 5 of the CrPC held as under:—*
>
> *"33. The anatomy of this saving section is simple, yet subtle. Broadly speaking, there are three components to be separated. Firstly, the Procedure Code generally governs matters covered by it. Secondly, if a special or local law exists covering the same area, this latter law will be saved and will prevail. …"*
>
> ***41**. **The PCPNDT Act is certainly and obviously "other law" within the meaning of Section 4 of the CrPC, as the PCPNDT Act and the rules made thereunder prescribe the manner or regulate the manner or place of***

investigating, inquiring into and trying of the offence alleged to have been committed under the Act.

48. *Similarly, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the matter of* ***Sujatha Scan Centre v. State of Telangana, LAWS(APH) 2018 7 39*** *while quashing the investigation made pursuant to the first information report lodged under the*

PCPNDT Act and while highlighting the scientific investigation to be made by the appropriate authority having knowledge and experience in the field, held as under:—

> *"7. Thus, these rules and regulations have passed only in exercise of power under Section 34 of the Act and in view of these guidelines referred above, any complaint against the person, who violated the provisions of the Act, compliant case alone is to be filed but not otherwise, as per guideline No. 3 of the Code of Conduct for Appropriate Authorities under the PCPNDT Act that as far as possible, not to involve the police for investigating cases under the Act as the cases under the Act are tried as complaint cases, that means, the police are not competent to investigate into the offences under the Act since it depends upon the scientific investigation by the person having knowledge in the specific field i.e., doctors. The police cannot investigate into and collect any evidence in such cases. Similarly, in the guidelines for responding to complaint, it is made clear that FIR should be avoided under the PC & PNDT Act as there is no direct role of police in the Act. This is in consonance with the rule 18A(3)(iv) of the Act. Therefore, unless those guidelines or regulations are placed before the Parliament in exercise of power under Section 34 of the Act, they will have no statutory force like any other enactment."*

(Emphasis supplied)

(VIII) MADHYA PRADESH

47. In ***Manvinder Singh Gill (Dr.) vs. State of M.P. : ILR (2014) MP 1176***, the complaint was filed by the Additional Collector, who was never authorised either by the Central Government or by the State Government and the District Magistrate was the appropriate authority. Therefore, on the aforesaid facts the High Court of Madhya Pradesh, has allowed the application for quashing of the complaint cases, holding that the private complaints filed by the Additional Collector are not maintainable and held that the Additional Collector was incompetent to initiate the action against the accused persons for the purpose of Section 28 of the PC & PNDT Act. It was further held that even the authorization by the appropriate authority would not authorize the Additional Collector, as the same cannot be treated the order of the appointment of appropriate authority to file private complaints under provisions of Section 28 PC &

PNDT Act. The following observations of the M.P. High Court are relevant to be noted which reads as under:

> *"**11.** In view of the language of Section 28, it is apparent that the cognizance by the Court can be taken for an offence under the PC & PNDT Adhiniyam, on a complaint made by the Appropriate Authority concerned or any officer*
>
> *authorised in this behalf by the Central or the State Governments as the case may be or by the Appropriate Authority. As per Section 17 of the Adhiniyam, it is clear that the Central Government or the State Government by notification in the official gazette may appoint one or more Appropriate Authorities for each of the Union Territories or for whole or part of the State for the purpose of the said Adhiniyam. In case the Appropriate Authority has been appointed for whole of the State or the Union Territory it shall consist with three members which includes the Joint Director of Health and Family Welfare, eminent woman representing the Womens Organisation and an Officer of the Law Department of the Central or the State. But simultaneously the State Government has also conferred the power under Section 17(3) (b).to appoint any officer, for any part of the State. It appears that by the notification dated 4.04.2007. the District Magistrate, Indore was appointed as Appropriate Authority as per Section 17(3)(b) of the PC & PNDT Adhiniyam, in Sub-Section 4 of Section 17 the functions of the Appropriate Authority has been specified. Section 17(4) (e) has been introduced by 14th amendment in 2003, by which the Authority may take appropriate legal action against the use of any such selection technique, suo motu or bringing it to the notice to the said authority or he may initiate the independent investigation in a manner as prescribed. On the conjoint reading of Section 17 & 28, it is clear that the appointment of Appropriate Authority for the purpose of Section 17(3)(a) or (b) shall be by the Central or State Government as the case may be, by issuing a notification in the official gazette. It further reveals, why the legislation has used the word "appropriate authority concerned" and "appropriate authority" again in Section 28(1)(a). In the said context it is hereby explained that if the appropriate authority has been declared as per Section 17(3)(a) then the word "appropriate authority concerned" is relevant but in cases of Section 17(3)(b) the word "appropriate authority" as used in Section 28(a) would be relevant.* ***On reading Section 28(1) (a) it further reveals that the Central or the State Government can also appoint any officer authorized in this behalf, but the cognizance of an offence under the PC & PNDT Adhiniyam can be taken by the court only when a complaint is made by the "appropriate authority" or "by any officer authorized" by Central or State Government, otherwise not.*** *It is relevant to note here that as per Section 28(1)(b) in case a social organization has filed a complaint being juristic person as explained in the explanation, then it may be maintained by giving 15 days notice to the Appropriate Authority indicating the intention of filing a complaint in the Court. As per Section 28(3) on issuance of the notice by the person against whom the complaint is made the documents used against him shall be supplied. In the facts of the present case the provision of Section 28(1)(a) applies and Section 28(1)(b) is not attracted, however, it is not discussed in detail.*
>
> ***12.*** *In both the above mentioned petitions, the record of the trial Court has been called. On perusal of the record of the private complaint No. 1839/2011 in M.Cr.C. No. 4393/2013 it is clear that the said-private complaint has been filed by one Shri Anand Sharma, Additional Collector, Indore indicating himself as Competent Officer under the PC & PNDT Adhiniyam as per order dated 28.07.2010 issued by the Collector, District Indore. Similarly in M.Cr.C. No.*

4395/2013 the private complaint No. 19564/07 has been filed by ***Smt. Renu Pant, Additional Collector specifying herself to be the Appropriate Authority or officer authorized under the PC & PNDT Adhiniyam as per order dated 12.04.2007 passed by the District Magistrate, Indore****. In both these complaints the evidence before charge has not yet been recorded. The Court has passed the order of taking cognizance on the said private complaints, therefore, the issue to maintain such complaint and the order taking cognizance has been assailed before this Court.*

13. *In view of the notification issued by the State Government dated 4.4.2007, it is clear that in exercise of the-power conferred under Section 17(2)(3)(b) the District Magistrate, Indore has been appointed as appropriate authority.* ***No other order/notification issued by the State Government for appointment of appropriate authority or officer authorized, in favour of Smt Renu Pant or Shri Anand Sharma, Additional Collectors has been filed. By the order passed by the Collector on 12.4.2007 and 28.7.2010 they have been nominated to help the appropriate authority in monitoring for execution of the PC & PNDT Adhiniyam. As per the requirement of law, in view of the language of Section 28(1)(a) the complaint may be maintained either by the appropriate authority or by the officer authorized by the Central or State Government. On the basis of nomination order of Collector in favour of Smt. Renu Pant and Shri Anand Sharma, they cannot be treated to be the appropriate authority or officers authorized for the purpose of Section 28 of the Adhiniyam.***

14. *As per the discussion made herein above and looking to the notifications and the orders filed by the State Government, it is clear that the notification dated 4.4.2007 issued by the State Government declaring the District Magistrate, Indore as appropriate authority for the purposes of District Magistrate is in consonance to the provisions contained under Section 17(3)(b) of the PC & PNDT Adhiniyam. The orders passed by the Collector, District Indore nominating Smt. Renu Pant and Anand Sharma, Additional Collectors to help him in monitoring on 12.4.2007 and 28.7.2010 are not the orders of appointment of appropriate authority or the officers authorized to maintain the complaint. As discussed herein above the appointment of appropriate authority or officer authorized shall be as per the provisions of the Adhiniyam by the Central or the State Government. The order of nomination passed by the District Magistrate cannot be termed the order of appointment of appropriate authority or the officers authorized for the purpose of Section 17(2)(3)(b) and for the purpose of Section 28(1)(a) of the PC & PNDT Adhiniyam.* ***Thus, it is to be held that the aforesaid private complaints filed by Smt. Renu Pant and Shri Anand Sharma, Additional Collectors are not filed by the appropriate authority or the officer authorized, therefore the said complaint is not maintainable. The order taking cognizance passed by the Court on such complaint is also unsustainable as per Section 28(1)(a) of the PC & PNDT Adhiniyam****.*

15.xxxxxxxxxxx.

16. *It is relevant to observe here that the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Adhiniyam & Rules is special enactment. The said Adhiniyam has been introduced with an object to prohibit the sex selection. The legislature intent is to restrain the sex determination before or after conception and for regulation of Pre-natal Diagnostic Techniques for the purpose of and detecting genetic abnormalities and metabolic disorder or chromosomal or certain technical male formation or sex link disorder and for prevention of their misuse or sex determination*

leading to female foeticide. In this regard, the stringent provision has been made and the procedure has also been specified codifying all the possibilities. On commission of the offence and after conviction Jail sentence and suspension or cancellation of the registration of the Genetic Counselling Center, Generic Laboratory or Genetic Clinic is there. In case the Central Government by enacting the law making stringent provisions want to implement it, then the Central or State Government are also bound to follow the procedure as prescribed in the Adhiniyam. If the action is taken by the State authorities in violation to the statutory provisions and the procedure as prescribed, it can be

writ large. It is a settled principle of law that no one can be deprived by the right without following the procedure established under the law. However, in the present case without following the provisions and the procedure prescribed under PC & PNDT Adhiniyam the private complaint has been filed by the State authorities whereupon the cognizance has been taken by the Court which cannot be regarded as per law and on account of violation of the statutory provisions the Court can pass the appropriate order for quashing such complaints and by setting aside the order taking cognizance, in exercise of power under Section 482 of Cr. P.C.

17. xxxxxxxx.

18. *In view of the foregoing discussion, in the considered opinion of this Court, M.Cr.C. Nos. 4393/2013 and 4395/2013 both are allowed. Private complaints filed by the Additional Collectors are held to be incompetent to initiate the action against the petitioners for the purpose of Section 28 of the Adhiniyam. It is to be further held that the orders of nomination dated 12.04.2007 and 28.07.2010 passed by the District Magistrate, Indore, cannot be treated the orders of appointment of the Appropriate Authority or an officer authorized to file private complaints. In consequence if the complaint has not been filed by the appropriate authority or the officer authorized by the Central or the State Government as required under Section 28(1)(a) of the Adhiniyam the order taking cognizance passed by the Court is also not in conformity to the law, therefore set aside. However, the State Government or the appropriate authority is at liberty to take recourse of law as per the discussion made herein above and after following the procedure prescribed under the PC & PNDT Adhiniyam if law permits. In the facts and circumstances of the case, parties to bear their own costs."*

(Emphasis supplied)

48. The issue whether the complaints made by the officer authorized by the appropriate authority and also investigation under 17(3) of the PC & PNDT Act is maintainable in view of Section 28 of the PC & PNDT Act, has been further dealt by the M.P. High Court in Judgement of ***Dr. Swaroop Charan Sahu vs. The State of Madhya Pradesh (M.Cr.C. No. 11773 of 2013)*** in the judgement and order dated 05.01.2018 and it has been held that the appropriate authority and the members of the Advisory Committee has specified for Section 17 as the authority for the purpose of Section 28(1) of the PC & PNDT Act. In the aforesaid judgment the M.P. High Court has held as under:-

"15. *Looking to the aforesaid, in the context of observation of* ***Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.2226/2014 dated 3.8.2015, "any officer authorized by the Appropriate Authority notified under***

Section 17(3) would also be entitled to file the complaint" *now, it would be apt to see whether Appropriate Authority has notified or authorized any officer under Section 17(3) to initiate the action by filing complaint. In this regard, nothing has been brought on record by the State Government or by the OIC of the case, producing the document. In absence thereto, the argument advanced by learned counsel for the respondent is of no avail.*

16*. In addition, it is required to be noticed under PC & PNDT Act, the complaint can be made in a competent Court of the State by the officer as specified in Section 17(3)(b) or as specified in Section 28(1)(a) of the Act. The word "complaint" has been defined in Cr.P.C. under Section 2(d) which is reproduced as under :-*

> *"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*
>
> *Explanation.- A report made by a police officer in a case which discloses after investigation, the commission of non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."*

and the word "made" has also been defined in the ***Law Lexicon P. Ramanatha Aiyar, Second Edition****, which is as under :-*

> ***"The word 'made' means 'filed'. Filing does not contemplate personal presentation. Any mode can be used but the application should be received by the authority concerned within the time prescribed by law. Kanchan Singh vs. S.T.A.T. Lucknow AIR 1980 All 23.***

Section 28(1)(a) of the PC & PNDT Act start with non-obstante clause and to restrict the Court in taking cognizance of the offence under the provisions of this Act except on a complaint made, therefore, ***the word "complaint" and "made" both are relevant. In the backdrop of the definition of complaint as per Section 2(d) of Cr.P.C., means a written or oral accusation made to the Judicial Magistrate to start proceedings against a known or unknown person. It does not include the report given to the police (F.I.R.). The purpose of the complaint is to apply to the Judicial Magistrate for setting the criminal action in motion.*** *Unlike the provisions as specified in Section 142 of Negotiable Instruments Act wherein also cognizance can be taken for an offence punishable under Section 138 of the said Act on filing a complaint in writing. Thus, looking to the language of Section 28(1)(a) of the PC & PNDT Act, the cognizance can be taken by a Court on a complaint made for the offence under the said Act. The said complaint can be made either by the authorities specified under Section 17(2)(3) & 28(1)(a) or by the person in a manner as specified in Section 28(1)(b), for setting up a criminal action of an offence under PC & PNDT Act.* ***The case at hands relates to Section 28(1)(a), therefore, it can safely be concluded that the complaint must be signed by the appropriate authorities or appropriate authority or the person notified by the Central Government or the State Government or authorised by the appropriate authority by notification, though its personal presentation is not required.***

17. *The aforesaid issue has been dealt with by this Court in the case of* ***Dr. Das***

Motwani (supra) *in M.Cr.C. No.10264/2016, wherein this Court after referring to the judgment of the Supreme Court has held as under :-*

> *"12. Shri Sanjay Dwivedi, learned Deputy Advocate General lays much emphasis on the observation made by Hon'ble the Apex Court observing*
>
> *that the High Court omitted under Section 28(1)(a) of the Act,* ***any officer authorized by the appropriate authority notified under Section 17(3) would also be entitled to initiate action under the Act****. It is submitted by him, the said observation may be contrary to the provision of Section 17(3) but in view of the observation made in the judgment of the Apex Court it would operate as law. In this regard, it is suffice to observe that this Court has already discussed the provisions of Section 17(2)(3)(a) and (b) and also Section 28(1) of the PC and PNDT Act. It is not for the Court to say that observation in the judgment is in consonance to the provision of the Act or not.* *But looking to the facts of the present case, even if the observation of the Apex Court in the said judgment has considered, the CMHO, Bhopal has not notified as officer authorized by the appropriate authority to act as per Section 17(3) of the PC and PNDT Act. No notification has been produced before this Court, therefore, it can safely be concluded that* ***CMHO, Bhopal has not authorized by the District Magistrate, Bhopal as appropriate authority to make the complaint as required under Section 28(1) of the Act and as per the judgment of the Apex Court****. Therefore, in the facts of the present case, it is held that complaint has not made by "appropriate authority" or any officer authorized by the State Government under the provision of PC and PNDT Act, however, the trial Court cannot take cognizance as specified under Section 28(1)(a) of the PC and PNDT Act, therefore, the order taking cognizance passed by trial Court is not in accordance to law.*
>
> *13. In view of the foregoing discussion, this petition under Section 482 of the Cr.P.C. is hereby allowed. The complaint made by the Chief Medical and Health Officer, Bhopal against the petitioner is hereby quashed. However, it is open to the appropriate authority to take action as permissible under the law. In the facts parties to bear their own costs."*

18*. In view of the foregoing discussion, in my considered opinion,* ***the C.M.H.O., Bhopal and Hoshangabad, are not the officer authorized under Section 17(2)(3) and 28(1)(a) of the PC and PNDT Act, however, cognizance taken by the Court on the complaint made by them for the offence under the provisions of this Act is illegal and without jurisdiction and such complaints are liable to be quashed in exercise of the powers under Section 482 of Cr.P.C****. Thus, the questions posed for answer are decided accordingly."*

(Emphasis supplied)

(IX) APEX COURT

49. The aforesaid judgement in ***Manvinder Singh Gill (supra)*** (Madhya Pradesh) was assailed before the Apex Court in ***SLP (Cri.) No. 2226 of 2014 (State of M.P. vs. Manvinder Singh Gill)***. While dismissing the aforesaid Special Leave Petition on 03.08.2015, the Apex Court has observed as under:-

"By the impugned order, the High Court after noticing that the person who prosecuted the respondent did not come within the definition of "Appropriate Authority" as stipulated under Section 17(3) of the Pre-Conception and Pre-Natal Diagnostic Technique(Prohibition of Sex Selection) Act,1994, [hereinafter referred to as 'the Act'] held that the complaint was not maintainable.

We perused Section28(1)(a)of the Act which reads as under:-

"28. Cognizance of offences.(1) No court shall take cognizance of an offence under this Act except on a complaint made by-- (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be or the appropriate authority;"

When read carefully it emerges that the Authority is vested in three officers, namely, ***the Appropriate Authority, i.e. the authority as notified under Section 17(3) of the Act apart from any officer authorised in that behalf either by the Central Government or the State Government or by the concerned Appropriate Authority*** *notified under Section 17(3) itself.*

In the case on hand, however, the High Court has noted that the officers who were authorised by the concerned appropriate authorities to help the Appropriate Authority to monitor and have effective implementation of the Act cannot construed as officers authorised in that behalf as provided under Section 28(1)(a) of the Act. The High Court had, therefore, no other go except to set aside the proceedings initiated at the instance of the petitioner and while setting aside the same gave liberty to the petitioner to take appropriate recourse under the provisions of the Act.

Learned counsel for the petitioner, however, drew our attention to paragraph 11 of the impugned judgment wherein while considering Section 17(3)(b) and (28)(1)(a) of the Act, the High Court stated that action under the Act can be taken by the Court only when a complaint is made by "the appropriate authority" or "by any officer authorised by the Central Government or State Government, otherwise such action would not be valid in law. While stating so, the High Court ***has omitted to note that under Section 28(1)(a) any officer authorised by the "Appropriate Authority" notified under Section 17(3) would also be entitled to initiate action under the Act****.*

While clarifying the said position, since we do not find any flaw in the ultimate order of the High Court based on the facts noted in the case on hand, we do not propose to interfere with the same.

The Special Leave Petitions stand disposed of with the above clarification."

(Emphasis supplied)

50. In the aforesaid judgement while dismissing the Special Appeal Petition the Apex Court has observed that the High court has omitted to note that under Section 28 (1)(a) of the PNDT Act, any officer authorized by the "Appropriate Authority" notified under Section 17(3) would also be entitled to initiate action under the Act.

51. In ***Ravinder Kumar v. State of Haryana, 2024 SCC OnLine SC 2495,*** the Apex Court while dealing with Section 30 of the PC & PNDT

Act, has observed as under:

> *"**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 Penal Code, 1860 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 & Others : (2008) 14 SCC 186,** 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, 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 subsection (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.*

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."*

(Emphasis supplied)

SIMILAR PROVISIONS UNDER THE OTHER SPECIAL ACT

52. The first and foremost, which is almost identical to the provisions of the PC & PNDT Act, is the Transplantation of Human Organs Act, 1994 (hereinafter referred to as the 'TOHO Act'), which was also passed in the same year as the PC PNDT Act i.e 1994. Section 22 of TOHO Act deals with cognizance of offence and the same reads as under:-

"22 - 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 or, as the case may be, the Appropriate Authority; or

(b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the Court.

(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 sub-section (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."

53. Similarly, Section 22 of the Mines And Minerals (Development And Regulation) Act, 1957 (in short 'MMDR Act') deals with cognizance of offence and the same reads as under:-

"Cognizance of offence

22. No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

54. Similar provision is contained in Section 32 of the Drugs and Cosmetics Act, 1940 (in short 'Drugs Act'), which is being reproduced below:-

"32. Cognizance of offences. — (1)No prosecution under this Chapter shall be instituted except by—

(a) an Inspector; or

(b)any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c)the person aggrieved; or

(d)a recognised consumer association whether such person is a member of that association or not.

(2)Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3)Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."

INTERPRETATION BY APEX COURT OF SIMILAR PROVISIONS UNDER THE SPECIAL ACT

55. Before proceeding further, it will be relevant to note how the courts have dealt with the similar provisions under other special Acts of the like nature.

(I) TOHO ACT

56. The first and foremost, which is almost identical to the provisions of the PC & PNDT Act is the Transplantation of Human Organs Act, 1994 (hereinafter referred to as the 'TOHO Act').

57. The provision of Section 22 of the TOHO Act has been dealt by the Apex Court in the case of ***Jeewan Kumar Raut And Another vs. Central Bureau of Investigation, (2009) 7 SCC 526*** wherein the Apex Court has dealt with the conflict of provisions of Section 167(2) of the Code with Section 22 of the TOHO Act. The following observations of the Apex Court in ***Jeewan Kumar Raut (supra)*** would be relevant for the purpose of controversy involved in the instant case.

> *"19. TOHO is a special Act. It deals with the subjects mentioned therein, viz. offences relating to removal of human organs, etc. Having regard to the importance of the subject only, enactment of the said regulatory statute was imperative.*
>
> *20. TOHO provides for appointment of an appropriate authority to deal with the matters specified in sub-section (3) of Section 13 thereof. By reason of the aforementioned provision, an appropriate authority has specifically been authorised inter alia to investigate any complaint of the breach of any of the provisions of TOHO or any of the rules made thereunder and take appropriate action. The appropriate authority, subject to exceptions provided for in TOHO, thus, is only authorised to investigate cases of breach of any of the provisions thereof, whether penal or otherwise.*
>
> *21.* ***Ordinarily, any person can set the criminal law in motion. Parliament and the State Legislatures, however, keeping in view the sensitivity and/or importance of the subject, have carved out specific areas where violations of any of the provisions of a special statute like TOHO can be dealt with only by the authorities specified therein.*** *The FIR lodged before the officer in charge of Gurgaon Police Station was by way of information. It disclosed not only commission of an offence under TOHO but also under various provisions of the Penal Code.* ***The officer in charge of the police station, however, was not authorised by the appropriate Government to deal with the matter in relation to TOHO; but, the respondent was****. In that view of the matter, the investigation of the said complaint was handed over to it.*
>
> *22.* ***TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences.***
>
> *23. TOHO being a special Act and the matter relating to dealing with offences* ***thereunder having been regulated by reason of the provisions thereof, there***

cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code. The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorised officer. Nobody else could do it. For the aforementioned reasons, the officer in charge of Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.

24. The respondent has been constituted under the Delhi Special Police Establishment Act, 1946. In terms of the provisions of the said Act, the authorities specified therein could make investigation in connection with a complaint. The mode and manner in which the investigation could be carried out have been laid down in the Act and/or the Manual framed thereunder. It is for the aforementioned reason, upon receipt of the complaint from the officer in charge of Gurgaon Police Station, it presumably having made a preliminary inquiry, lodged the FIR. Only because it lodged the FIR and proceeded in terms of the said Act and the Manual, the same by itself would not mean that all the provisions of Chapter XII of TOHO vis-à-vis Chapter XV thereof could not be invoked.

25. Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. ***The respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no police report could be filed, sub-section (2) of Section 167 of the Code was not attracted.***

26. ***It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorisation under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it.*** *But, as* ***it could not file a police report but a complaint petition only****; sub-section (2) of Section 167 of the Code may not be applicable.*

27. *The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and* ***as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO.***

28. ***To put it differently, upon completion of the investigation, an authorised officer could only file a complaint and not a police report, as a specific bar has been created by Parliament. In that view of the matter, the police report being not a complaint and vice versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO.***

35. Before parting, however, we must place on record that we have not been called upon to consider the constitutionality of the provisions of TOHO and in particular Section 22 thereof. Thus, fairness in procedure as adumbrated in Article 21 of the Constitution of India as also the restrictions on liberty imposed by reason of the statute having regard to the fact situation obtaining herein has neither been argued nor is required to be determined. We have made these observations keeping in view the dichotomy in the matter of application of TOHO vis-à-vis the provisions of the Code. ***If a complaint petition is filed, the procedure laid down under Chapter XV of the Code can be taken recourse to despite the fact that the same has been filed after full investigation and upon obtaining the remand of the accused from time to time by reason of orders passed by a competent Magistrate.***

36. We are, however, not oblivious of some decisions of this Court where some special statutory authorities ***like the authorities under the Customs Act have been*** *granted all the powers of the investigating officer under a special statute like the NDPS Act, but,* ***this Court has held that they cannot file charge-sheet and to that extent they would not be police officers.*** *(See Ramesh Chandra Mehta v. State of W.B. [AIR 1970 SC 940] and Raj Kumar Karwal v. Union of India [(1990) 2 SCC 409 : 1990 SCC (Cri) 330] .*

37. In the present case, however, the respondent having specially been empowered both under the 1946 Act as also under the Code to carry out investigation and file a charge-sheet is precluded from doing so only by reason of Section 22 of TOHO. ***It is doubtful as to whether in the event of authorisation of an officer of the Department to carry out investigation on a complaint made by a third party, he would be entitled to arrest the accused and carry on investigation as if he is a police officer. We hope that Parliament would take appropriate measures to suitably amend the law in the near future****."*

(Emphasis supplied)

58. Thus, in the case of ***Jeewan Kumar Raut (supra)***, the Apex Court has categorically held that the police officers are incompetent to file a police report before the Magistrate. It is only an Appropriate Authority, who can investigate the matter under the TOHO Act and file a complaint case before the Magistrate only on which cognizance can be taken by the Magistrate. Filing a police report in view of the specific provisions of Section 22 of the TOHO Act, is precluded.

(II) MMDR ACT

59. In ***State NCT of Delhi vs. Sanjay, (2014) 9 SCC 772***, the Apex Court while dealing with Section 22 of the Mines and Minerals (Development and Regulation) Act, 1976 (in short 'the MMDR Act') ,which also contains the same similar bar has held as under:-

"61. Reading the provisions of the Act minutely and carefully, prima facie we are of the view that there is no complete and absolute bar in prosecuting

persons under the Penal Code where the offences committed by persons are penal and cognizable offence.

62. Sub-section (1-A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. In other words no person will do mining activity without a valid lease or licence. Section 21 is a penal provision according to which if a person contravenes the provisions of sub-section (1-A) of Section 4, he shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure, 1973. Section 22 of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any Rule made thereunder except upon a complaint made by a person authorised in this behalf. It is very important to note that Section 21 does not begin with a non obstante clause. Instead of the words "notwithstanding anything contained in any law for the time being in force no court shall take cognizance….", the section begins with the words "no court shall take cognizance of any offence."

69. ***Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed.*** *The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.*

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code."

60. Relying upon the aforesaid judgment of ***Sanjay (Supra)***, the Apex Court in the case of ***Jayant vs. State of Madhya Pradesh, (2021) 2 SCC 670*** while dealing with the same provisions of Section 22 of the MMDR Act has held as under:-

"21. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-à-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

21.1. ***That the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the In-charge/SHO of the police station concerned to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted.***

21.2. ***The bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and the Rules made thereunder*** *and orders issuance of process/summons for the offences under the MMDR Act and the Rules made thereunder.*

21.3. ***For commission of the offence under IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and the Rules made thereunder.***

21.4. That ***in respect of violation of various provisions of the MMDR Act and the Rules made thereunder****, when a Magistrate passes an order under Section 156(3) of the Code and directs the In-charge/SHO of the police station concerned to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and the Rules made thereunder and thereafter* ***after investigation the In-charge of the police station/investigating officer concerned submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and the Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.***

21.5. In a case where the violator is permitted to compound the offences on payment of penalty as per sub-section (1) of Section 23-A, considering sub-section (2) of Section 23-A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any Rules made thereunder so compounded. However, the bar under sub-section (2) of Section 23-A shall not affect any proceedings for the offences under IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

61. It will be further relevant to note the subsequent Full Bench judgment of the Apex Court in ***Pradeep S. Wodeyar vs. State of Karnataka, (2021) 19 SCC 62,*** wherein having regard to the provisions of Section 22 of the MMDR Act the Full Bench has held that if the FIR is lodged by the

person authorized under the Act, who is empowered to file a complaint under the provisions of Section 22 of the MMDR Act, if on such FIR investigation has been carried out and the report under Section 173 (2) of the Code has been filed, this will be sufficient compliance of Section 22 of the MMDR Act and the Magistrate is empowered to take cognizance on such report submitted under Section 173(2) of the Code. However, the aforesaid observation was made in view of the peculiar circumstances of the aforesaid case. The relevant paragraphs are reproduced herein:-

> *"**101**. The Government of Karnataka issued a Notification on 29-5-2014 declaring that the Office of the Inspector General of Police, Special Investigation Team, Karnataka Lokayukta shall be a "police station" for the purpose of Section 2(s) and shall have jurisdiction throughout the State of Karnataka for the offences related to the illegal mining of minerals. The FIR was filed by the SIT, Lokayukta pursuant to the order of this Court dated 16-9-2013 [Samaj Parivartana Samudaya v. State of Karnataka, (2018) 5 SCC 732 : (2018) 2 SCC (Cri) 858] and was signed by the Sub-Inspector of Police, Karnataka Lokayukta. On a reading of the Notification dated 29-5-2014, it is evident that the SIT has the jurisdiction throughout Karnataka in relation to mining offences.* ***Sl. No. 13 of the Notification dated 21-1-2014 authorises the "Sub-Inspector of Police" within its jurisdiction for the purpose of Section 22 of the MMDR Act. Therefore, on a combined reading of both the notifications, it is clear as daylight that the complaint filed by SIT and signed by the Sub-Inspector of Police has complied with Section 22 of the MMDR Act.***
>
> ***D. The conclusion***
>
> *108. In view of the discussion above, we summarise our findings below:*
>
> *108.1. The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209CrPC. The order of the Special Judge dated 30-12-2015 taking cognizance is therefore irregular.*
>
> *108.2. The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465CrPC.*
>
> *108.3. The decision in Gangula Ashok [Gangula Ashok v. State of A.P., (2000) 2 SCC 504 : 2000 SCC (Cri) 488] was distinguished in Rattiram [Rattiram v. State of M.P., (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2)CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2)CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong*

proceedings, among others.

108.4. In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated.

108.5. It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect*. Therefore, no "failure of justice" under Section 465CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465CrPC.*

108.6. The Special Court has the power to take cognizance of offences under the MMDR Act and conduct a joint trial with other offences if permissible under Section 220CrPC. There is no express provision in the MMDR Act which indicates that Section 220CrPC does not apply to proceedings under the MMDR Act.

108.7. Section 30-B of the MMDR Act does not impliedly repeal Section 220CrPC. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings.

108.8. Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material*.*

108.9. ***A combined reading of the Notifications dated 29-5-2014 and 21-1-2014 indicate that the Sub-Inspector of Lokayukta is an authorised person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22CrPC.***

(Emphasis supplied)

(III) The DRUGS & COSMETICS ACT

62. Similarly, in the case of ***Union of India vs. Ashok Kumar Sharma, (2021) 12 SCC 674*** the Division Bench of the Apex Court while dealing with the provisions of Drugs and Cosmetics Act, 1940 (Drugs Act), where also the bar is provided under Section 32 of the said Act that no proceedings can be initiated except on the complaint of the Drug Inspector for the offences under the Drugs Act. The Apex Court has held as under:-

"73. Chapter XII CrPC carries the chapter heading "Information to the Police and their Powers to Investigate":

73.1. The Chapter starts off with Section 154 carrying section heading "Information in cognizable cases". It declares that every information relating to a cognizable offence given to an officer-in-charge of the police station, if given orally, is to be reduced to writing and whether given in writing or reduced to writing it is to be signed by the informant. The key elements of Section 154CrPC can be noticed. Information in relation to a cognizable offence reaching the officer in charge of a police station which is ordinarily understood as first information statement concerning cognizable offences sets the ball rolling so far as the police officer in charge of a police station is concerned.

73.2. The next provision to notice in the Chapter is Section 156. It provides that any officer in charge of a police station may without the order from a Magistrate investigate any cognizable offence within which a court, having jurisdiction over a local area within the limits of such station, would have the power to enquire into or try under the provisions of Chapter XIII. In fact, Section 177CrPC, which is the first section in Chapter XIII dealing with jurisdiction of criminal courts inquiries and trial, proclaims that every offence shall ordinarily be enquired into and tried by a court within whose jurisdiction, the offence was committed. Thus, ordinarily, it is the police officer, within whose jurisdiction the cognizable offence is committed, would have the jurisdiction to investigate that offence. Section 178 onwards provide for the exceptions to Section 177 and we need not probe this matter further. Sub-section (2) declares the proceedings of police officer in a case of cognizable offence shall not in any stage be called in question on the ground that the case was one which he was not empowered to investigate under the provision. Lastly, sub-section (3) provides that any Magistrate who is empowered under Section 190 may order such an investigation which the officer is to undertake under sub-section (1)

73.3. It is next relevant to notice Section 157CrPC:

"157. Procedure for investigation.—(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:
Provided that

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-

section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

74. It comes under the section heading "Procedure for investigation". The body of the section can be split up into the following parts:

74.1. An officer in charge of a police station may from information received have reason to suspect the commission of an offence. He may also have reason to suspect the commission of cognizable offence not on the basis of any information but otherwise.

74.2. As far as information is concerned, it is clearly relatable to the information which has been provided to him within the meaning of Section 154. Cases where he acts on his own knowledge would be covered by the expression otherwise.

74.3. ***The offences must be an offence which he is empowered under Section 156 to investigate. We have noticed that a police officer is empowered to investigate a cognizable offence without an order of the Magistrate.*** *As far as non-cognizable offence is concerned, he cannot investigate such offence without the order of the Magistrate having power to try or commit the case for trial.*

74.4. ***However, a police officer who undertakes to investigate the matter is obliged to forthwith send a report of the same to the Magistrate empowered to take cognizance of an offence upon a police report. It is at once relevant to notice in the facts of this case that this indispensable element is not present. This is for the reason that under Section 32 of the Act, a Magistrate is not competent to take cognizance of the offences under Chapter IV of the Act upon a police report****.*

74.5. At this juncture, we may notice Section 158CrPC. It speaks about the manner of sending the report to the Magistrate under Section 157. ***It is a matter governed by a general or special order issued by the State Government. Quite clearly even Section 158 cannot apply in the case of a cognizable offence falling under Chapter IV of the Act for the reasons which we have adverted to****.*

74.6. Section 159 enables the Magistrate on receiving such report to direct investigation or if he thinks fit at once to proceed or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry or otherwise to dispose of the case in the manner provided in the Code. It is clear that the purpose of Section 157 is to hold the police officer accountable to keep informed the Magistrate. It acts as an assurance that the reports are not tampered with, and that the rights of the accused are sought to be secured. The purport of Section 159 is also to enable the Magistrate to exercise control over the investigation. All these aspects are irrelevant and out of bounds both for the police officer and the Magistrate in respect of an offence falling under Chapter IV of the Act.

75. Section 160 refers to investigation under the Chapter viz. Chapter XII. Section 161 speaks about the examination of witnesses and how the statements are to be reduced to writing. Again, Section 161 speaks about an investigation

carried out under Chapter XII. The use to which statements under Section 161 can be put and the limitation on the same are spelt out in Section 162CrPC. Reverting back to Section 157, we have taken note of the requirement about the police officer reporting to the Magistrate about the reason to suspect entertained by the police officer about the commission of a cognizable offence on which the Magistrate is to take cognizance on a report. Be it remembered that the Magistrate can take cognizance under Section 190CrPC on a complaint, a police report or information received from any person other than a police officer or otherwise. Section 157 appears to contemplate information received under Section 154 or knowledge gained otherwise about the commission of a cognizable offence clothing the police officer with the power to investigate leading to the sending of the report to the Magistrate being confined to cases where officer intends to send the police report which has been defined as the "report" under Section 173CrPC.

76. ***In regard to taking cognizance under Section 32 of the Act, it is unambiguously clear that there is no place for a police report within the meaning of Section 173CrPC in regard to offences falling under Chapter IV of the Act****. Section 157CrPC contemplates that the officer proceeding either by himself or through his subordinate officer to investigate the facts and circumstances, and if necessary, to take measures for the discovery and the arrest of the offender.* ***But on reading the provisions, we gather the unmistakable impression that the law-giver has empowered the police officer to investigate in the case of a cognizable offence without any order of the Magistrate where he ultimately in an appropriate case wishes the Court to take cognizance based on the material he gathers and transmits a police report. If this impression of ours is not flawed, an inevitable corollary would be that in the case of offence under Chapter IV of the Act though it be cognizable, a police officer would not have the power to investigate the matter****.*

85. It is to be noted that ***the duty to register FIR, when information is received about a cognizable offence falling under Chapter IV of the Act, it is clear from the very inception that a police officer has no jurisdiction to investigate the offence. It is not a case of absence of territorial jurisdiction. No doubt, if it is a case of another police officer being empowered to investigate the offence in terms of powers under CrPC, the law is, as laid down, that there is the obligation to register an FIR and then make it over to the police station which has jurisdiction.*** *In fact, a conflict, when in the context of Sections 178 to 185CrPC, which constitute exceptions to the general principle laid down in Section 177CrPC, the High Court is to decide the dispute, as is provided in Section 186CrPC.* ***If an information is relatable only to cognizable offences under Chapter IV of the Act, we would think that the police officer would be out of bounds and he has no role to play in the investigation as neither he nor any other police officer has any role to play in the investigation. His duty lies in referring the complainant to the Drugs Inspector concerned. If he is in receipt of information about an offence under Chapter IV of the Act, he must promptly notify the Drugs Inspector concerned.***

The Conclusions/Directions

170. Thus, we may cull out our conclusions/directions as follows:

170.1. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of CrPC, ***the police officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.***

170.2. There is no bar to the police officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act i.e. if he has committed any cognizable offence under any other law.

*170.3. Having regard to the scheme of CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties**, a police officer cannot register an FIR under Section 154CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of CrPC**.*

*170.4. **Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence**. He is, however, bound by the law as laid down in D.K. Basu [D.K. Basu v. State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92] and to follow the provisions of CrPC.*

*170.5. **It would appear that on the understanding that the police officer can register an FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspector, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law**. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.*

*170.6. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. **Therefore, in regard to the power of arrest, we make it clear that our decision that police officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this judgment**.*

170.7. We further direct that the Drugs Inspector, who carry out the arrest, must not only report the arrests, as provided in Section 58CrPC, but also immediately report the arrests to their superior officers."

(Emphasis supplied)

63. From the aforesaid authoritative pronouncement in ***Ashok Kumar Sharma*** **(supra)** by the Apex Court, which has dealt with the provisions of the Code of Criminal Procedure in great detail with the special law i.e. the Drugs Act, the Apex Court has concluded that in view of the bar created under the special Act that no proceedings can be initiated except by the person authorized to do so, then the police investigation or submission of report in the matter merely because the offence under the special law were cognizable and non-bailable offence, is impermissible

and it is only the person authorized under the special Act, who can investigate the matter and thereupon file the complaint before the Magistrate, only upon which cognizance can be taken by the Magistrate. The cognizance in the police report cannot be taken.

INTERPLAY BETWEEN THE PROVISIONS OF (Cr.P.C) (THE GENERAL LAW) AND PC&PNDT ACT (SPECIAL LAW)

64. Learned counsel for the applicant has argued that no FIR/charge-sheet could have been filed in the present case, since the offence against the applicant is under the PC & PNDT Act, which is an special enactment and all the proceedings under the Act, can only be performed by the Appropriate Authority. With regards to the registration of the FIR as well as investigation by the police, it will be relevant to note some provisions of the Code of Criminal Procedure, 1973 (herein after referred to as 'the Code'). Section 2(a) of the Code defines the "bailable offence" as an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence. Section 2(c) defines cognizable offence and the same reads as under:-

> *(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.*

65. Section 2(d) of the Code defines the complaint. Section 2(h) defines investigation. Section 2 (r) of the Code defines the police report meaning a report forwarded by a police officer to a magistrate under sub-section (2) of Section 173. Section 4 and 5 of the Code are relevant and are reproduced herein:-

> ***"4. Trial of offences under the Indian Penal Code and other laws**.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
> *(2) **All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.***
>
> ***5. Saving**.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in*

force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

66. Chapter XII of the Code deals with Information to the Police and their powers to investigate. Section 154 provides that every information relating to the commission of a cognizable offence given orally to a police officer in charge of a police station shall be reduced to writing and be read to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it and the substance of the same to be entered in the book as prescribed by the State Government. Section 155 deals with the information received by a police officer with regard to non-cognizable offences and the manner of investigation of such cases. It is further provided that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Section 156 of the Code deals with police officer's power to investigate cognizable cases and the same reads as under:-

"156. Police officer's power to investigate cognizable case**.—(1) Any officer in charge of a police station may, without the order of a Magistrate, **investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

67. Section 157 provides for the procedure of investigation and the same is reproduced below:-

*"**157. Procedure for investigation**.—(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery*

and arrest of the offender:

Provided that—

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

68. Section 161 of the Code provides for the recording of the statement of witnesses during investigation and Section 162 limits the use of such statements. Section 173 provides for the report of police officer on completion of investigation. Chapter XIV deals with conditions requisite for initiation of proceedings and in this Chapter Section 190 reads as under:-

*"**190. Cognizance of offences by Magistrates**.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—*

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

69. Chapter XV of the Code deals with Complaints to Magistrates.

Section 202 provides for the procedure how the Magistrate shall proceed with the enquiry of such complaint made to it. Section 202 of the Code is also reproduced herein:-

> ***"202. Postponement of issue of process***.—*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*
>
> *Provided that no such direction for investigation shall be made,—*
> *(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*
> *(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*
>
> *(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*
>
> *(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant*."

70. Chapter XVI of the Code provides for Commencement of Proceedings before Magistrates. Section 204 deals with the issue of process in a case where the Magistrate taking cognizance there is sufficient ground for proceeding in the matter. It may also be relevant to note Part II of the First Schedule to the Code wherein the offences have been classified being cognizable or non-cognizable. For ready reference, Part II of the First Schedule of the Code is being reproduced below:-

II.—CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS			
Offence	*Cognizable or non-cognizable*	*Bailable or non-bailable*	*By what court triable*
If punishable with death,	*Cognizable*	*Non-bailable*	*Court of*

imprisonment for life, or imprisonment for more than 7 years			*Session.*
If punishable with imprisonment for 3 years and upwards but not more than 7 years	*Ditto*	*Ditto*	*Magistrate of the first class.*
If punishable with imprisonment for less than 3 years or with fine only	*Non-cognizable*	*Bailable*	*Any Magistrate.*

71. Section 4 of the Code provides that all the offences under the Indian Penal Code shall be investigated, inquired into and tried, and otherwise dealt with in accordance with the provisions of the Code. This is however, subject to any enactment for the time being in force which provides otherwise in the matter of manner or the place of investigation in regard to offence under special law. Section 5 of the Code provides if any special law contemplates any special jurisdiction, power or any special form of procedure prescribed unless there is something contrary to be found, it is the provisions of the special law/local law which shall prevail.

72. Section 27 of the PC & PNDT Act provides that every offence under the PC & PNDT Act shall be cognizable, non-bailable and non-compoundable. However, in view of Section 28 of the PC & PNDT Act, no court is competent to take cognizance of offence under the PC & PNDT Act except on a complaint made by the persons described in the Act. Section 17(4) (c) empowers the Appropriate Authority to investigate the complaints for breach of the provisions of this Act or the rules made thereunder and take immediate action. Section 17A of the PC & PNDT Act further empowers the Appropriate Authority to summon any person who is in possession of any information relating to the violation of the provisions of the Act or the rules made thereunder, production of any document or material object relating to the offence, issuing search warrant for any place indulging in sex-selection techniques or pre-natal

sex determination and any other matter, which may be prescribed. Section 30 of the PC & PNDT Act empowers the Appropriate Authorities under the Act to search and seize the records in case of any violation is found and with regard to said search and seizure, the procedure prescribed in the Code shall be followed. Sub-rule (3) of Rule 18A of the Rules, 1996 provides the procedure on receipt of complaint and the investigation thereof and further provides that investigation in all the complaints received under the PC & PNDT Act shall be completed within 48 hours of receipt of such complaint. It further provides that as far as possible, the police authorities shall not be involved for the purpose of investigation as the cases under the PC & PNDT Act are tried as complaint case under the Code. In view of the aforesaid provisions, specifically provided in the Rule 18A and Section 28 and 30 of the PC & PNDT Act, on receipt of any complaint for violation under the PC & PNDT Act, it is only the Appropriate Authority authorized under Section 28, that can investigate the matter. The police investigation has been specifically barred. It is, however, when any obstruction is created by such violators, which cannot be handled without the involvement of the police, only for that purpose, for the assistance of the Appropriate Authority, the police can be associated with the investigation but in all cases the investigation has to be done by the Appropriate Authorities as prescribed under Section 17 and Section 28 of the PC & PNDT Act and Rule 18A of the PC & PNDT Rules.

PC & PNDT ACT AND RULES ARE COMPLETE CODE IN ITSELF WITH REGARD TO INVESTIGATION, SEARCH & SEIZURE AND FILING OF COMPLAINT BEFORE THE COURT

73. From the perusal of the provisions of section 17, 17A & 30 of the PC & PNDT Act and Rule 12 & 18A of the PC & PNDT Rules forms a complete Code in itself with regard to the receipt of the complaints, investigation, search and seizure and filing of the complaint before the competent authority. Rule 18A(3)(iv) specifically prohibits the

involvement of the police for the investigation of case under the PC & PNDT Act. Rule 18A(3)(iv) further provides the proper procedure for receiving of the complaint and registration of each of the complaints so received by the appropriate authority. It is further mandated in the aforesaid rules that while dealing with such complaint received by the appropriate authority, the appropriate authority shall maintain the transparency in every follow up action action and the appropriate authority is expected to investigate the matter immediately after receipt of the complaints without involving the police. Therefore, from inception of receipt of the complaint for violation of the provisions of the Act and with regard to the investigation, search and seizure, which is provided under Section 30 read with Rule 12 of the Rules and after completing the investigation procedure to take the remedial measures and also to file the complaint case, if so required, looking at the gravities of the offence. From the scheme of the Act as well as the rules in the considered opinion of this Court it is not mandatory for the appropriate authority to file the complaints in each and every case of violation of the provisions of the Act. The Act itself provides sufficient remedial measures and if those measures are adopted the criminal complaints are not required to be filed in each and every case. In view of the aforesaid the registration of F.I.R. for violation of any provisions of this Act, is impermissible and consequentially, no investigation by the police is permissible for offence under the Act, which are otherwise specifically technical area of investigation. Therefore, the PC & PNDT Act, being the Special Law, the provisions of General Law i.e., Cr.P.C., would not apply with regard to receipt of the complaints for any violation of any provisions of this Act and investigation search, seizure and initiating the criminal proceedings in the competent court and would be governed only under provisions of the PC & PNDT Act.

THE ISSUES FOR DETERMINATION

74. From the arguments advanced by the parties and from the perusal of the record and the provisions of the PC & PNDT Act as well as the

Criminal Procedure as noted herein above, the following questions emerge for determination in the instant case:-

(A) Whether, the Appropriate Authority, merely on suspicion, without there being any reason to believe, can direct the search and seizure in terms of Section 30 of the PC & PNDT Act?

(B) Whether, for the offences under the PC & PNDT Act, the registration of FIR at the police station is permissible, merely because the offences under PC & PNDT Act have been made cognizable and non-bailable?

(C) Whether the investigation by the police is permissible for the offences under the PC & PNDT Act? AND Who can investigate the complaints, received for violation of the provisions of the PC & PNDT Act?

(D) Whether on the charge sheet submitted after the investigation by the police, the competent magistrate can take cognizance of the offence under the PC & PNDT Act?

(E) Who are the persons, who are authorised to file a complaint case under Section 28 of the PC & PNDT Act?

(F) Whether, it is mandatory for the Appropriate Authority to file a complaint case before the Magistrate U/S 28 of the PC & PNDT Act, if on a investigation done by it or the officer authorised by it, finds the violation of the provisions of the PC & PNDT Act?

(G) What are the parameters for quashing of the FIR, charge-sheet and cognizance orders, for the offence under the PC & PNDT Act?

FINDINGS

ISSUE (A)

75. In view of the judgement of the Apex Court in ***Ravinder Kumar (supra),*** wherein the Apex Court while interpreting Section 30 of the PC & PNDT Act, held that first part of sub-section (1) of Section 30 safeguards the interest of the Genetic Laboratory or Genetic Clinic etc.,

and held that search and seizure can be authorized only if appropriate authority has reason to believe that an offence under the PC & PNDT Act has been committed or is being committed and the reason to believe is not mere formality. Before asking the search and seizure in terms of Section 30, there must be sufficient material on the basis of which the appropriate authority has reason to believe that offene under the PC & PNDT Act are being committed or have been committed. Therefore, the ISSUE (A) is answered to the effect that the appropriate authority merely on suspicion without there being any reason to believe, based on sufficient material, cannot direct the search and seizure in terms of Section 30 of the PC & PNDT Act.

ISSUE (B & C)

76. In ***Jeewan Kumar Raut*** **(Supra),** the Apex Court, while dealing with the identical provisions of the TOHO Act, has taken a categorical view that the police report is inconsequential and the FIR for the offence under the provisions of the TOHO Act cannot be entertained, if any such information is received in writing, it is the duty of the police officer to report it to the Appropriate Authority, under the Act only, who can investigate the matter and file a complaint on conclusion of the investigation. The aforesaid view, finds approval in the judgment of ***Ashok Kumar Sharma (Supra)***, which has categorically dealt with the provisions of Code of Criminal Procedure as well as the special Act. Thus, in view of the aforesaid, this court is of the opinion that wherever the special law provides that the complaints can be lodged or the prosecution can be initiated only by the specified persons under such special law, the police officers are debarred from registering the FIR and investigating the matter as in almost all the special laws the power to investigate under the Special Acts has been given to the specified officers under such special laws. Therefore, in the considered opinion of this Court, in view of the Bar created under section 28 of the PC & PNDT Act, for any offence under the Act, no person is authorized to register the F.I.R. Therefore, the registration of the FIR and investigation thereof is

categorically barred, as under the scheme of the PC & PNDT Act and the rules, on a complaint received by the Appropriate Authority for violation of any provisions of the PC & PNDT Act, the investigation can be done only by the Appropriate Authority himself or by the authorized person only. Therefore, police officers are debarred from registering the F.I.R. and investigating the matter. The PC & PNDT Act further provides that while carrying out the investigation, so far as it is possible, the Appropriate Authority or the person authorized under the PC & PNDT Act shall avoid the involvement of the police; however, involvement of police can be sought only for the purpose, when some restraint is there on the part of accused persons.

ISSUE (D)

77. Though, there are divergent views by different High Courts with regard to the investigation by the police and the results of such investigation and report submitted by the police. Section 156 and 157 of the Code provide the procedure after registration of the F.I.R., wherein it is provided that after registration of the FIR, it has to be reported to the concerned magistrate immediately, who is having power to take cognizance of such offences, if report is submitted after the investigation by the police. Since for the offence under the PC & PNDT Act, the magistrate cannot take cognizance of the police report, therefore, the entire exercise will be nothing but a futile exercise. Thus, such exercise is impermissible under the provisions of the PC & PNDT Act. Therefore, in the considered opinion of this Court, in view of the specific bar created by Section 28 of the PC & PNDT Act, it is not open for the Magistrate to take cognizance of the offence under the PC & PNDT Act on the basis of the police report submitted after investigation. It is only on the complaint filed by the persons authorized to file the complaint under Section 28 of the PC & PNDT Act, in which the cognizance can be taken by the Magistrate. Therefore, the registration of F.I.R. and the police investigation is not warranted under the PC & PNDT Act; otherwise also if any investigation is carried out by the police officer, the Magistrate is

incompetent to take cognizance thereof.

ISSUE (E)

78. In view of Section 28 of the PC & PNDT Act, the following persons are authorized to file complaint case for any offence under the PC & PNDT Act, i.e. (i) the Appropriate Authority; (ii) any other person authorized by the Central Government or the State Government, as the case may be; (iii) or any person authorized by the Appropriate Authority and (iv) a person who has given a notice of not less than 15 days to the appropriate authority for filing of the complaint before the magistrate.

ISSUE (F)

79. Since the offences under the PC & PNDT Act are the special offences, which require specified skills for investigating such offences. The PC & PNDT Act itself provides the regulatory remedial measures also, therefore, it is at the discretion of the Appropriate Authority whether to file a complaint or not, subject to recommendation of the Advisory Committee, as per Section 17(4) (i) after completing the investigation, even for cancellation or suspension of Registration. Therefore, in the considered opinion of this court, it is not mandatory for the appropriate autority to file a complaint case in each and every case before the Magistrate under Section 28 of the PC & PNDT Act for each and every violation of the provisions of the PC & PNDT Act. It is only when at the discretion of the appropriate authority and subject to recommendation of the Advisory Committee, complaint under Section 28 of the PC & PNDT Act can be filed.

ISSUE (G)

80. In ***R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21***, the Apex Court has laid down the following guidelines for exercising the powers for quashing of the proceedings, which reads as under:

> *"6. .....If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that* ***there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the***

proceeding on that ground. *Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise* ***where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged;*** *in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category* ***the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge****. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the* ***High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A*** *in the matter of quashing criminal proceedings....."*

(Emphasis Supplied)

81. The parameters for quashing of the complaint or the FIR are well settled parameters in view of the observations made in ***State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335.***

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any

offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) ***Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.***

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis Supplied)

82. In ***Rajiv Thapar v. Madan Lal Kapoor: (2013) 3 SCC 330*** the Apex Court has laid down the following guidelines for attracting the judicial conscious of the High Court to quash the criminal proceedings, which reads as under:

*"**30.** Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:*

***30.1.**Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?*

***30.2.**Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*

***30.3.**Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*

30.4.** Step four:* ***whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

***30.5.** If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would*

not conclude in the conviction of the accused."

(emphasis supplied)

83. In the case of ***Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315***, the Apex Court has held as under:-

> ***33.*** *In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:*
>
> ***33.1.*** *Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.*
>
> ***33.2.*** *Courts would not thwart any investigation into the cognizable offences.*
>
> ***33.3.*** *It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.*
>
> ***33.4.*** *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.33.6. Criminal proceedings ought not to be scuttled at the initial stage.*
>
> ***33.5.*** *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.*
>
> **33.6.** Criminal proceedings ought not to be scuttled at the initial stage.
>
> ***33.7.*** *Quashing of a complaint/FIR should be an exception rather than an ordinary rule.*
>
> ***33.8.*** *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.*
>
> ***33.9.*** *The functions of the judiciary and the police are complementary, not overlapping.*
>
> ***33.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.***

33.11. *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.*

33.12. *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.*

33.13. *The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.*

33.14. *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.*

33.15. *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.*

33.16. *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/ material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India.*

33.17. *Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an*

interim order.

33.18. *Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.*

84. Dealing with the special provisions of the PC & PNDT Act, the Delhi High Court in the case of ***Manoj Krishan Ahuja (Supra)*** has observed as under:-

"61. *The Act is silent as to what course is to be adopted and what is the repercussion of such chargesheet being filed in the court. As held by the Hon'ble Apex Court in the case of Rasila S. Mehta (supra), the purpose of law is not to allow the offender to sneak out of the meshes of law and that "the statutes must be construed in a manner which will suppress the mischief and advance the object the legislature had in view. A narrow construction which tends to stultify the law must not be taken."*

62. *Thus, hyper technical grounds cannot become the basis of quashing of chargesheets or FIRs, especially when offences under the Act are cognizable in nature."*

(Emphasis Supplied)

85. In view of the findings recorded by this Court that the investigation and the charge sheet by the police is impermissible in view of the provisions of the special enactment as well as the scheme of the Code of Criminal Procedure, therefore, if any cognizance is taken by the Magistrate on the police report submitted, the same cannot be approved and in such circumstances, such cognizance order is bad in law and can be quashed. However, if any complaint is made by a person who is not the Appropriate Authority or have not been authorised by the State Government or the Central Government or is not the person authorised by the Appropriate Authority or is not the person, who has already given a notice of not less than 15 days to the Appropriate Authority, the complaint cannot be entertained. If any such complaint is filed and entertained, then of course this Court has the power to quash such proceedings as has already been done by the co-ordinate Bench of this Court in ***Dr. Vinod Kumar Bassi (Supra)***.

FINDGS IN THE INSTANT CASE

86. Since, in the instant case there is no material available on record to

suggest that any satisfaction has been recorded by the appropriate authority with regard to there being any offence committed or have been committed by the applicant herein, except the action taken by the Tehsildar, who is allegedly the person authorized by the appropriate authority. However, no such authorization has been produced on record. Therefore, it appears that the instant proceedings were initiated merely on the basis of suspicion by the appropriate authority, which is not permissible in view of the judgement of the Apex Court in ***Ravinder Kumar (supra)*****.** Further, in the instant case the person authorized by the appropriate authority after conducting the illegal raid has lodged the F.I.R. and thereupon, the charge-sheet was filed by the police on which the cognizance has been taken by the Additional Chief Judicial Magistrate, Bulandshahr, vide order dated 02.01.2018 for the offence under Sections 315 and 511 I.P.C. and under Section 4/5(2)6(a)/23/25 of the PC & PNDT Act, is an impermissible exercise in view of the findings recorded by this Court hereinabove. Therefore, the cognizance order as well as the F.I.R. and the charge-sheet deserve to be quashed, as the Magistrate is incompetent to take cognizance of such charge-sheet/police report, specifically, for the offence under the provisions of PC & PNDT Act. Therefore, in the considered opinion of this Court the entire proceedings of the instant case is vitiated and deserve to be quashed and are hereby ***quashed***. The instant application is ***allowed*** accordingly.

The Certificate under Article 134A read with Article 134 (1)(C) of the Constitution of India

87. As have been noted hereinabove, with regard to the following questions related to the PC & PNDT Act, there are divergent views of the different High Courts, which are required to be settled by the Apex Court:

> (A) Whether, for the offences under the PC& PNDT Act, the registration of FIR at the police station is permissible, merely because the offences under PC & PNDT Act have been made cognizable and non-bailable?

(B) Whether the police investigation is permissible for the offences under the PC & PNDT Act? AND Who can investigate the complaints, received for violation of the provisions of the PC& PNDT Act?

(C) Whether on the charge sheet submitted after the investigation by the police, the competent magistrate can take cognizance of the offence under the PC & PNDT Act?

89. Therefore, in the considered opinion of this Court, it is necessary that above questions be authoritatively settled by the Apex Court. In view thereof, it is certified that it is a fit case for appeal to be filed before the Apex Court under Article 134(1)(c) read with Article 134A of the Constitution of India with regard to the aforesaid questions for an authoritative pronouncement by the Apex Court.

Order Date :- 30th September, 2024
Kirti/Shubham Arya

(Anish Kumar Gupta, J.)