



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. _____ OF 2026
(ARISING OUT OF SLP (CRIMINAL) NO. 5915 OF 2025)

DR. NARESH KUMAR GARG **APPELLANT(S)**

VERSUS

STATE OF HARYANA AND ORS. **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 24.07.2024 passed by the High Court of Punjab and Haryana at Chandigarh (briefly ‘the High Court’ hereinafter) in CRM-M No. 52858 of 2022 (*Naresh Kumar Garg Vs. State of Haryana*).

3. It may be mentioned that appellant as the petitioner had filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (briefly 'the Cr.P.C.' hereinafter) for quashing of the complaint bearing No. COMA/116/2018 dated 19.09.2018 filed under various provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (briefly, 'the PCPNDT Act' hereinafter) as well as the summoning order dated 12.09.2022 passed by the Judicial Magistrate First Class, Gurugram. However, *vide* the impugned judgment and order dated 24.07.2024, the High Court dismissed the aforesaid petition.

4. At the outset, a brief recital of the relevant facts would be in order.

5. It is stated that appellant is a qualified radiologist by profession.

5.1. On 17.09.2015, Chairman, District Appropriate Authority-cum-Civil Surgeon, Gurugram, Dr. Pushpa Bishnoi received a complaint from a lady named Smt. Rajni to the effect that she knew a person called Dr. Abdul Kadir of Geetanjali Hospital in Badshahpur who was allegedly

running a racket of illegal sex-determination. On receipt of such a complaint, the Chairman constituted a three-member team alongwith support staff to conduct a raid and investigate the complaint against the said Dr. Abdul Kadir.

5.2. A pregnant lady named Smt. Suman had come to the Civil Hospital, Gurugram for her routine checkup on 17.09.2015. Dr. Saryu Sharma, who was a member of the team constituted by the Chairman, approached her and apprised her about the complaint against Dr. Abdul Kadir. Dr. Sharma requested her if she could help the authority by becoming a decoy patient in the proposed raid. The lady Smt. Suman agreed to the proposal and gave her written consent to become a decoy patient.

5.3. Thereafter, shadow witness Rajni was asked to call Dr. Abdul Kadir and to ask him for sex-determination of her relative i.e. the decoy patient Smt. Suman. Dr. Kadir was informed that Smt. Suman was pregnant and that she wanted to know the sex of her foetus. Dr. Abdul Kadir agreed to the proposal but demanded Rs. 25,000.00 for carrying out sex-determination of the foetus and thereafter to disclose the same. Shadow witness Rajni agreed to pay the same.

5.4. Dr. Saryu Sharma gave Rs. 25,000.00 (Rs. 1,000 into 25 notes) to shadow witness Rajni whereafter Smt. Suman accompanied by shadow witness Rajni went to Sector 56, Gurugram (near Badshahpur) to meet Dr. Abdul Kadir, who came after some time in his vehicle. Dr. Kadir asked the two of them to sit in his vehicle whereafter he was paid Rs. 25,000.00. He started driving his vehicle towards Vatika Medicare in Sector 45, Gurugram. After talking with someone over phone, he told the two of them that he had a word with one Dr. Naresh Garg, a radiologist, at Vatika Medicare who would conduct the ultrasound on the patient in order to determine the sex of her foetus. Dr. Kadir informed the two ladies that Dr. Naresh Garg would neither ask the patient to sign any document nor would he sign Form F. Dr. Kadir further clarified that Dr. Naresh Garg would not make any entry of the patient in the register and that he would provide the patient the ultrasound report without putting his signature within a day or two.

5.5. It may be mentioned that the team constituted by the Chairman was following the vehicle of Dr. Abdul Kadir. When Dr. Kadir and the two ladies reached Vatika Medicare,

he asked the patient to go to the room of the ultrasonologist to get her ultrasound done. It is the case of the complainant that the ultrasound on patient Suman was conducted by Dr. Naresh Garg himself. Dr. Garg neither signed Form F nor did he ask Smt. Suman to sign any document. He also did not sign the ultrasound report.

5.6. It was at this stage that the team members constituted by the Chairman alongwith other officials and police personnel confronted Dr. Abdul Kadir and recovered Rs. 25,000.00 from his right pocket. The numbers of these notes matched the numbers of the notes given by the team to the decoy patient. The team also confronted Dr. Naresh Garg and on checking all records found that Form F had not been signed by Dr. Naresh Garg. There was no entry of the name of the decoy patient Smt. Suman in any register maintained in the hospital.

6. Dr. Saryu Sharma gave first information to the police at the spot on the basis of which FIR No. 336 of 2015 dated 17.09.2015 was registered by the police of Police Station Sector 40, Gurugram.

6.1. On conclusion of investigation, police filed a discharge application dated 28.10.2015 before the trial court stating that there was no incriminating material against the appellant. By order of the same date i.e. 28.10.2015, trial court allowed the application filed by the police and discharged the appellant.

7. District Advisory Committee adopted resolution dated 17.12.2015 recommending lodging of a complaint against the appellant Dr. Abdul Kadir, the appellant, and Vatika Medicare. Ultimately one Dr. Chitranjan, Deputy Civil Surgeon, was authorized by the District Appropriate Authority to lodge a complaint against the appellant under the PCPNDT Act *vide* the authorization letter dated 17.09.2018.

7.1. Pursuant thereto, a complaint bearing No. COMA/116/2018 was lodged against the appellant and Dr. Abdul Kadir under various provisions of the PCPNDT Act as well as under Rules 9 and 10 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (briefly, 'the PCPNDT Rules' hereinafter). As

there was delay in lodging of the complaint, an application for condonation of delay was also filed.

7.2. By order dated 18.09.2018, the trial court allowed the application for condonation of delay. Thereafter the trial court i.e. Judicial Magistrate First Class, Gurugam *vide* order dated 12.09.2022 summoned the accused persons i.e. Dr. Abdul Kadir and Dr. Naresh Garg under Section 3 of the PCPNDT Act for 30.11.2022.

8. Aggrieved thereby, appellant filed a petition before the High Court under Section 482 Cr.P.C. for quashing of the complaint dated 18.09.2018, the summoning order dated 12.09.2022 and all consequential proceedings, which was registered as CRM-M-52858/2022. By the impugned judgment and order dated 24.07.2024, the High Court dismissed the said petition holding that there was no merit therein.

9. Aggrieved thereby, the related special leave petition was filed.

10. This Court *vide* the order dated 15.04.2025 had issued notice and in the meanwhile directed stay of

proceedings of complaint case bearing No. COMA/116/2018 pending before the Chief Judicial Magistrate, (Judicial Magistrate First Class) Gurugram, Haryana.

11. Learned senior counsel for the appellant Mr. Bhalla submits that appellant is a doctor who works as an employee in a diagnostic center at Gurugram. He is being wrongly and illegally prosecuted for the offences under Sections 23 and 29 of the PCPNDT Act, Sections 4, 5 and 6 thereof added later on. According to him, appellant is a victim of an illegal raid/sting operation which led to registration of an FIR in which appellant was discharged. It is unfortunate that after his discharge, the District Appropriate Authority, Gurugram lodged the related complaint in which appellant was summoned.

11.1. It is submitted that nothing has been recovered from the appellant. Witnesses had deposed both in the complaint proceedings as well as before the police that appellant did not disclose the sex of the foetus. On the other hand, an amount of Rs. 25,000.00 was recovered from Dr. Abdul Kadir. The only surviving allegation against the

appellant is that he did not fill in the requisite forms and registers.

11.2. Referring to the order dated 17.09.2015 directing conduct of a sting operation, learned senior counsel submits that the said order was not a legally valid order in as much as the same was passed by a solitary member of the District Appropriate Authority. In this connection, reference has been made to a judgment of this Court reported in *Ravinder Kumar Vs. State of Haryana*¹ wherein it has been held that an order passed by a single member of the District Appropriate Authority directing conduct of a sting operation is illegal and void and renders the entire proceedings null and void. Learned senior counsel asserts that the order dated 17.09.2015 which led to the sting operation which further led to registration of FIR and lodging of complaint against the appellant amongst others was not passed by the District Appropriate Authority but by a single member of the said authority. Therefore, in view of Section 30 of the PCPNDT Act and the judgment of this Court in *Ravinder*

¹ 2024 SCC Online SC 2495

Kumar, the said order dated 17.09.2015 has no legal significance; as a result, the resultant sting operation, the documents collected pursuant thereto, the complaint and the order of summoning by the trial court are illegal and void; thus liable to be set aside.

11.3. Learned senior counsel asserts that facts in *Ravinder Kumar* are identical to the facts in the appellant's case in as much as the sting operation was ordered by a single member of the District Appropriate Authority. That being so, the decision of this Court in *Ravinder Kumar* is squarely applicable to the facts of the present case. Consequently, the sting operation directed by order dated 17.09.2015 would be a nullity; hence the complaint and the summoning order are liable to be quashed as being wholly untenable in law as well as on facts.

11.4. Learned senior counsel submits that the District Appropriate Authority is defined under Section 2(a) of the PCPNDT Act. It is appointed and notified under Section 17. The notification constituting the District Appropriate Authority in the present case was issued on 07.11.2013 and comprises of the following members:

- (i) Civil Surgeon;
- (ii) District Programme Officer, Women and Child Development Department; and
- (iii) District Attorney.

11.5. The power to conduct search and seizure is contained in Section 30 of the aforesaid Act. The order to conduct search and seizure is required to be passed by the District Appropriate Authority i.e. by all the three members. In so far the present case is concerned, the order to conduct the raid was admittedly passed only by the Civil Surgeon on 17.09.2015 without associating the other two members viz. the District Programme Officer of the Women and Child Development Department and the District Attorney.

11.6. In so far FIR No. 0336 dated 17.09.2015 is concerned, learned senior counsel submits that the said FIR was registered against Dr. Abdul Kadir and the appellant pursuant to the raid. However, the appellant was discharged by the trial court *vide* the order dated 28.10.2015 pursuant to an application dated 28.10.2015 of the prosecution on the ground that police could not find any connection between

the appellant and Dr. Abdul Kadir who is now facing prosecution in the criminal case arising out of the FIR registered under Section 420 of the Indian Penal Code, 1860 (IPC).

11.7. It was only after the discharge of the appellant that the complaint was filed. Learned senior counsel submits that the subsequent complaint is not maintainable in as much as the complaint is based on the same set of facts on which the appellant was earlier discharged.

11.8. Mr. Bhalla, learned senior counsel, submits that appellant was discharged because both the witnesses had denied that he had informed them about the sex of the foetus. That apart, one of the witnesses Smt. Rajni denied her presence at Vatika Hospital; rather, she stated that she was present at Medanta Hospital. That apart, respondents have failed to establish beyond a reasonable doubt any relationship between the parties. Further, it was the case of the respondents that appellant had allegedly committed the offence on the instructions of Dr. Abdul Kadir. However, no evidence was tendered to prove the relationship.

11.9. Learned senior counsel submits that the raiding party comprised of Dr. Saryu Sharma (Deputy Civil Surgeon, Gurugram), Shri Shyam Sundar (Secretary, Red Cross, Gurugram) and Shri Amandeep Chauhan (Drugs Control Officer). Thereafter, the District Advisory Committee was formed in which one of the members of the raiding party i.e. Shri Shyam Sundar was made a member of the District Advisory Committee *vide* the resolution dated 27.12.2015. This is contrary to Rule 18A(2)(ii) of the PCPNDT Rules which prohibits a member of the investigating authority in becoming a part of the District Advisory Committee.

11.10. Much emphasis has been laid by learned senior counsel for the appellant on the fact that it was only after the discharge of the appellant in the criminal case based on the FIR, that the complaint was filed. Such a complaint is not maintainable. That apart, court proceedings have revealed that both the witnesses i.e. the pregnant lady Suman and the shadow witness Rajni have categorically denied that Dr. Naresh Kumar Garg, the appellant, had ever informed them about the sex of the foetus. Appellant was summoned and made party to the complaint despite having

been discharged in the criminal case arising out of FIR No. 336 of 2015 which pertained to the same incident and identical evidence. Therefore, the contention is that the complaint and all proceedings arising therefrom should be quashed as otherwise the appellant would have to suffer the ordeal of a criminal trial which is based on identical evidence as in the criminal case arising out of the related FIR in which the appellant was discharged.

11.11. Based on the aforesaid submissions, learned senior counsel for the appellant submits that the present appeal should be allowed in the interest of justice.

12. *Per contra*, Mr. Neeraj, learned Additional Advocate General appearing for the respondents submits that the impugned judgment is a well-reasoned one. The present appeal is wholly misconceived. It is totally devoid of merit. It seeks to unsettle the well-reasoned judgment of the High Court. Therefore, the appeal should be dismissed.

12.1. Learned Additional Advocate General thereafter gave a brief narration of the facts. He submitted that on 17.09.2015, acting upon information indicative of illegal pre-

natal sex determination, the district authority conducted a raid in the clinic of the appellant. The raiding team seized the ultrasound machine, documents, incomplete and deficient forms and entries, unregistered referrals and records that were *prima-facie* in violation of Rules 9 and 10 of the PCPNDT Rules. He then referred to the provisions of Rules 9 and 10.

12.2. An FIR was initially registered and based upon police investigation, appellant was discharged in that proceeding on 28.10.2015.

12.3. Asserting that PCPNDT Act confers independent powers upon the District Appropriate Authority to initiate proceedings upon examination of the records and statutory contravention, learned Additional Advocate General submits that the District Advisory Committee met on 17.12.2015 and examined the materials whereafter it recommended filing of complaint. The District Appropriate Authority authorized initiation of complaint proceedings by issuing a formal authorization to the Deputy Civil Surgeon under Rule 18A of the PCPNDT Rules on 17.09.2018.

12.4. Submitting that no case for interference by this Court in the complaint proceedings have been made out, learned Additional Advocate General submits that appellant has failed to establish that the complaint discloses no offence and that the prosecution is manifestly absurd or that the action is barred by law. It is contended that the raid was carried out on 17.09.2015 by a duly constituted enforcement team, supervised by the District Appropriate Authority and documented contemporaneously. The mere allegation that the authorization letter did not contain all signatures is insufficient to quash a complaint. The presumption of validity of the raid stood reinforced by subsequent ratification through the District Advisory Committee proceedings, the decision of the District Appropriate Authority and Rule 18A of the PCPNDT Rules. No *mala fide* or perversity has been demonstrated by the appellant.

12.5. Adverting to Section 17(4)(c) of the PCPNDT Act, learned Additional Advocate General submits that the said provision expressly empowers the appropriate authority to take immediate action if the circumstances so warrant. The

Chairperson upon receiving credible information acted promptly to prevent destruction and manipulation of record. The subsequent discovery of Form F entries fully validates the need for urgency.

12.6. Referring to the decision of this Court in *Federation of Obstetrics and Gynaecological Societies of India (FOGSI) Vs. Union of India*², learned Additional Advocate General submits that there is clear violation of Rules 9 and 10 of the PCPNDT Rules in this case. Such violations by the appellant are not minor procedural lapses but grave statutory contraventions that strike at the very heart of the PCPNDT Act. He has also referred to Rule 18A of the PCPNDT Rules which empowers the appropriate authority to delegate its functions to subordinate authority. Accordingly, the District Appropriate Authority delegated to the Deputy Civil Surgeon the authority to file the complaint. Contention of the appellant that the District Appropriate Authority as a whole must physically authorize filing of complaint is untenable.

² (2019) 6 SCC 283

12.7. Further submission is that the argument of the appellant that the District Advisory Committee also comprised of an individual who was a member of the raiding party, thus vitiating proceedings of the District Advisory Committee, is irrelevant. Even assuming irregularity, which is not conceded, such irregularity in the composition of an advisory body cannot vitiate a prosecution initiated independently by the District Appropriate Authority. However, he has clarified that this submission of the appellant is factually incorrect. The allegation that one Shyam Sunder was a member of the District Advisory Committee who also participated in the raid is factually incorrect. The said individual was not a member of any investigating agency. He was a civilian volunteer associated with the Red Cross assisting the district authorities in social welfare enforcements. He had neither any formal investigative powers nor was he part of the police machinery. Rule 18A(2)(ii) of the PCPNDT Rules applies only to persons from the investigating machinery meaning police or statutory enforcement bodies. Even assuming an irregularity in the composition of the District Advisory

Committee, such irregularity cannot invalidate an entire prosecution based on a statutory complaint. The role of the District Advisory Committee is purely advisory; its views are not binding and the independent decision of the District Appropriate Authority to lodge complaint is unaffected.

12.8. Learned counsel for the respondents also refuted the submission made on behalf of the appellant regarding violation of Section 30(2) of the PCPNDT Act. He submits that there has been substantial compliance to Section 30(2) of the aforesaid Act. A search which is otherwise valid, cannot be invalidated on a hyper technical ground.

12.9. That apart, the complaint was lodged well within limitation. Though the FIR was registered on 17.09.2015, police filed final report on 15.11.2015. Thereafter District Advisory Committee in its meeting held on 17.12.2015 recommended initiation of complaint proceedings. The District Appropriate Authority, Gurugram formally authorized Dr. Chitranjan on 17.09.2018 to lodge the complaint which was duly instituted on 18.09.2018. Learned Additional Advocate General submits that limitation would run from the date of recommendation of the

District Advisory Committee or authorization of the District Appropriate Authority and not from the date of registration of FIR. Since the offence carries a punishment of three years, complaint falls squarely within the ambit of Section 468(2)(c) Cr.P.C.

12.10. Finally, learned Additional Advocate General submits that the discharge granted on 28.10.2015 pertained to police investigation following lodging of FIR. However, the PCPNDT Act mandates that the court should take cognizance only upon a complaint filed by the appropriate authority. A police discharge order would have no bearing on the independent statutory power of the District Appropriate Authority.

12.11. Learned Additional Advocate General has drawn the attention of the Court to the object of the legislation. He submits that female foeticide is a matter of national concern. Social welfare statutes, like the PCPNDT Act, must be implemented with all seriousness. This Court has time and again directed the States to ensure strict compliance with the statute. Quashing of a complaint proceeding at the threshold on hyper technical grounds would send a contrary

signal and weaken enforcement at the grass root. Considering all these factors, the appeal should be dismissed, he submits.

13. Submissions made by learned counsel for the parties have received the due consideration of the Court.

14. At the outset, let us advert to the relevant provisions of the PCPNDT Act and the PCPNDT Rules.

15. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (already referred to as ‘the PCPNDT Act’ hereinabove) is a social welfare legislation. It is a law enacted to prohibit sex selection leading to female foeticide in India. It, *inter alia*, aims to arrest the declining sex ratio in India. The objectives of the PCPNDT Act declare that the said Act provides for prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques to prevent their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto. The PCPNDT Act, *inter alia*, provides for:

- (i) prohibition of the misuse of pre-natal diagnostic techniques for determination of the sex of the 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 Act.

16. Preamble to the PCPNDT Act says that it is an Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of their misuse for sex determination leading to female

foeticide and for matters connected therewith or incidental thereto.

17. In *Federation of Obstetrics and Gynaecological Societies of India (FOGSI)*, this Court was examining the challenge to the constitutional validity of certain provisions of the PCPNDT Act. It was in that context that this Court observed that it is a social welfare legislation which was conceived in the light of the skewed sex ratio in India and to avoid the consequences of the same. A skewed sex ratio is likely to lead to greater incidences of violence against women and increase in practices of trafficking, bride-buying etc. It is an effort to save the girl child. The focus of the PCPNDT Act is to protect the *right to life* of the girl child under Article 21 of the Constitution of India.

18. Discrimination against women, more particularly against the girl child, is widely prevalent across several parts of the country. Female foeticide is a crude manifestation of such a social malady. It is with a view to prevent such crime and to aligning with the global perspective for a discrimination free world, that the aforesaid legislation has been enacted in India.

19. As per Section 2(a), 'appropriate authority' has been defined to mean the authority appointed under Section 17.

20. Section 3A prohibits sex selection. It says that 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. Section 3B prohibits sale of ultrasound machines, etc. to persons, laboratories, clinics, etc. which are not registered under the PCPNDT Act.

21. Regulation of pre-natal diagnostic techniques is laid down in Section 4. It basically prohibits conducting pre-natal diagnostic techniques for sex determination, only permitting the use of such techniques for detection of abnormalities mentioned in sub-section (2) and subject to fulfillment of the conditions as provided in sub-section (3). Section 4 being exhaustive, is extracted in its entirety hereunder:

4. Regulation of pre-natal diagnostic techniques.— On and from the commencement of this Act,—

(1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

(2) no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:—

(i) chromosomal abnormalities;

(ii) genetic metabolic diseases;

(iii) haemoglobinopathies;

(iv) sex-linked genetic diseases;

(v) congenital anomalies;

(vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:—

(i) age of the pregnant woman is above thirty-five years;

- (ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease;
- (v) any other condition as may be specified by the Board:

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of Section 5 or Section 6 unless contrary is proved by the person conducting such ultrasonography;

- (4) no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2).
- (5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex selection technique on her or him or both.

21.1. Thus, in terms of the proviso to sub-section (3) of Section 4, it is mandatory for the person conducting

ultrasonography on a pregnant woman to keep the complete record relating to the ultrasonography in the clinic in such manner as may be prescribed and any deficiency or inaccuracy found in the maintenance of such record shall amount to contravention of Sections 5 or 6. However, the burden is on the person conducting such ultrasonography to prove the contrary.

22. Section 5 deals with written consent of pregnant woman for conducting pre-natal diagnostic procedure which is provided for in sub-section (1). Sub-section (2) bars all persons including the person conducting pre-natal diagnostic procedures from communicating to the pregnant woman or her relatives or any other person the sex of the foetus by words, signs or in any other manner.

23. Section 6 makes it categorically clear that determination of sex is completely prohibited. It says that no genetic counselling centre or genetic laboratory or genetic clinic or person shall conduct or cause to be conducted any pre-natal diagnostic technique including ultrasonography for the purpose of determining the sex of the foetus; and no person shall, by whatever means, cause or allow to be

caused selection of sex before or after conception. Infact, sex determination of a foetus is completely prohibited under Section 6, which reads thus:

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.

24. 'Appropriate authority' and 'advisory committee' are dealt with in Section 17. Sub-section (1) says that 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 the PCPNDT Act. As per sub-section (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 the PCPNDT Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. Sub-section (4) mentions the various functions that may be performed by the ‘appropriate authority’. Sub-section (4) of Section 17 reads thus:

17. Appropriate Authority and Advisory Committee-

* * * * *

(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; and,
- (d) to seek and consider the advise 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.

24.1. As per sub-section (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. Composition of advisory committee is provided for in sub-section (6).

24.2. From a close reading of sub-section (4), more particularly clause (e) thereof, it is evident that the appropriate authority has been mandated to take appropriate legal action against the use of any sex selection technique by

any person at any place *suo moto* or brought to its notice and also to initiate an independent investigation in such matter.

25. Power of appropriate authority is dealt with in Section 17A. Amongst other things, the appropriate authority shall have the power to issue search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination. Section 17A reads as under:

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.

26. Section 23 deals with offences and penalties. Section 23 reads as under:

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 any 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.

27. As per Section 24, a court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or by 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 (which permits such techniques only for the purposes of detection of certain abnormalities mentioned therein); such person shall be liable for abetment of the offence under sub-section (3) of Section 23 and shall be punished for the offence specified under Section 23.

28. Cognizance of offences is dealt with in Section 28 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 the 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 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.

28.1. Section 28 is a procedural provision which places clear limitations on the taking of cognizance by criminal courts, thereby ensuring that prosecutions under this specialized social welfare legislation are instituted in a controlled and legally structured manner. Sub-section (1), more particularly clause (a) thereof, mandates that no court shall take cognizance of an offence under the PCPNDT Act except on a complaint made by the appropriate authority or

by any officer authorized in this behalf by the Central Government or by the State Government or by the appropriate authority itself.

29. While Section 29 deals with maintenance of records, Section 30 provides for the power of search and seizure of records, etc. Sub-section (1) of Section 29 mandates that all records, charts, forms, reports, consent letters and all other documents required to be maintained under the PCPNDT Act and the PCPNDT Rules shall be preserved for a period of two years or for such period as may be prescribed. Sub-section (2) says that all such records shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other person authorized by the appropriate authority in this behalf.

29.1. Section 30(1) makes it clear that if the appropriate authority has reason to believe that an offence under the PCPNDT Act has been committed or is being committed at any genetic counselling centre, genetic laboratory, genetic clinic or any other place, such authority or any officer authorised in this behalf may enter and search

at all reasonable times such genetic counselling centre, genetic laboratory, genetic clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under the PCPNDT Act. Sub-section (2) clarifies that provisions of CrPC relating to searches and seizures shall apply to every search or seizure made under the PCPNDT Act, as far as may be.

30. Section 32 is the rule making provision.

31. In exercise of the powers conferred by Section 32 of the PCPNDT Act, the Central Government has made the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (already referred to as ‘the PCPNDT Rules’ hereinabove).

32. Rule 9 deals with maintenance and preservation of records. As per sub-rule (1), every genetic counselling centre, genetic laboratory, genetic clinic including a mobile genetic clinic, ultrasound clinic and imaging centre shall

maintain a register showing, in serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouses or fathers and the date on which they first reported for such counselling, procedure or test. Sub-rule (4) says that the record to be maintained by every genetic clinic including a mobile genetic clinic in respect of each man or woman subjected to any pre-natal diagnostic procedure/ technique/test shall be as specified in Form F.

32.1. In terms of sub-rule (6), all case related records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by the genetic counselling centre, genetic laboratory, genetic clinic, ultrasound clinic or imaging centre for a period of two years from the date of completion of counselling, pre-natal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records shall be preserved till the final disposal of legal proceedings or till the expiry of the said period of two years, whichever is later.

32.2. In case such centres or laboratory or clinics maintain records on computer or other electronic equipment, sub-rule (7) provides that a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.

32.3. Sub-rule (8) requires every such centre, laboratory and clinic to send a complete report in respect of all pre-conception or pregnancy related procedures/techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned appropriate authority.

33. Thus, under Rule 9, it is mandatory for every ultrasound clinic amongst others to maintain a detailed register in terms of Form F of the woman undergoing any pre-natal diagnostic procedure or pre-natal diagnostic test. Not only that, such clinic etc are required to submit a complete report regarding such procedures or tests conducted by it to the concerned appropriate authority.

34. Rule 10 deals with conditions for conducting pre-natal diagnostic procedures. Sub-rule (1) mandates obtaining of a written consent in the manner provided in Form G and in a language

the person undergoing such procedure understands, before conducting such a procedure. Sub-rule (1A) mandates that any person conducting ultrasonography/image scanning on a pregnant woman shall give a declaration on each report on ultrasonography/ image scanning that he has neither detected nor disclosed the sex of the foetus of the pregnant woman to anybody. Likewise, the pregnant woman shall before undergoing ultrasonography/image scanning shall declare that she does not want to know the sex of her foetus.

35. Facilities for inspection are dealt with in Rule 11. Sub-rule (1) provides that every such centre, laboratory, clinic, nursing home, hospital, etc. where any of the machines or equipments capable of performing any procedure, technique or test capable of pre-natal determination of sex or selection of sex before or after conception is used, shall afford all reasonable facilities for inspection of the place, equipment and records to the appropriate authority or to any other person authorized by the appropriate authority in this behalf, amongst others, for detection of misuse of such facilities or for selection of sex before or after conception or for detection/disclosure of sex of the foetus or

for detection of cases of violation of the provisions of the PCPNDT Act in any other manner.

35.1. Sub-rule (2) empowers the appropriate authority or the officer authorized by it to seal and seize any ultrasound machine, scanner or any other equipment capable of detecting the sex of foetus, used by any organization if the organization has not got itself registered under the PCPNDT Act. Such machines shall be confiscated and further action shall be taken as per provisions of Section 23 of the PCPNDT Act.

36. Procedure for search and seizure is laid down in Rule 12. As per sub-rule (1), the appropriate authority or any officer authorized in this behalf may enter and search at all reasonable times any such centre, laboratory or clinic in the presence of two 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 PCPNDT Act. Explanation 1 clarifies that such laboratory, clinic or

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. As per Explanation 2, 'material object' would include records, machines and equipments; and Explanation 3 clarifies that 'seize' and 'seizure' would include 'seal' and 'sealing' respectively.

37. While Rule 18 lays down the code of conduct to be observed by persons working at genetic counselling centres, genetic laboratories, genetic clinics etc., Rule 18A lays down the code of conduct to be observed by appropriate authorities. Sub-rule (1) of Rule 18A reads as under:

18A. Code of Conduct to be observed by Appropriate Authorities.—(1) All the Appropriate Authorities 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 authorized officer in his or her absence and preserve the order of authorization as documentary proof for further action.

37.1 Thus, Rule 18A (1)(v) says that all the appropriate authorities including the State, District and Sub-district shall delegate his or her powers by administrative order to any authorized officer in his or her absence and preserve the order of authorisation as documentary proof for further action.

37.2. Sub-rule (2)(ii) places a duty on all the appropriate authorities to ensure that a person who is a part of the investigating machinery in cases under the PCPNDT Act is not nominated or appointed as a member of the advisory committee.

37.3. As per sub-rule (3), all the appropriate authorities including the State, District and Sub-district shall observe certain conduct for processing of complaint and investigation, such as, maintaining of appropriate diaries in support of registration of complaints etc. Those authorities shall not involve police for investigating cases under the PCPNDT Act as far as possible, as the cases under the PCPNDT Act are tried as complaint cases under the Cr.PC.

38. We may also refer to Form F before we wind up our reference to the relevant provisions of the statute. Form F, which is relatable to the proviso to Section 4(3), Rule 9(4) and Rule 10(1A), is as under:

Form F

[See Proviso to Section 4(3), Rule 9(4) and Rule 10(1-A)]

**FORM FOR MAINTENANCE OF RECORD IN CASE OF
PRE-NATAL DIAGNOSTIC TEST/ PROCEDURE BY
GENETIC CLINIC/ ULTRASOUND CLINIC/ IMAGING
CENTRE**

Section A: To be filled in for all Diagnostic Procedures/Tests

1. Name and complete address of Genetic Clinic/
Ultrasound Clinic/ Imaging centre:.....
2. Registration No. (Under PC & PNDT Act, 1994)
.....
3. Patient's name..... Age

4. Total Number of living children:
 - (a) Number of living sons with age of each living son
(in years or months):
 - (b) Number of living daughters with age of each living
daughter(in years or months):.....
5. Husband's /Wife's/ Father's / Mother's Name:
.....
6. Full postal address of the patient with Contact
Number, if any.....
- 7.(a) Referred by (Full name and address of Doctor(s)/
Genetic Counseling Centre):.....
(Referral slips to be preserved carefully with Form F)
 - (b) *Self-Referral* by Gynaecologist/Radiologist/
Registered Medical Practitioner conducting the
diagnostic procedures:.....
*(Referral note with indications and case papers of the
patient to be preserved with Form F)*
8. Last menstrual period or weeks of pregnancy:
.....

**Section B : To be filled in for performing non-invasive
diagnostic Procedures/ Tests only**

9. Name of the doctor performing the procedure/s:
.....
10. Indication/s for diagnosis procedure
*(specify with reference to the request made in the
referral slip or in a self-referral note)*

(Ultrasonography prenatal diagnosis during pregnancy should only be performed when indicated. The following is the representative list of indications for ultrasound during pregnancy. **(Put a “Tick” against the appropriate indication/s for ultrasound)**

- i. To diagnose intra-uterine and/or ectopic pregnancy and confirm viability.
- ii. Estimation of gestational age (dating).
- iii. Detection of number of fetuses and their chorionicity.
- iv. Suspected pregnancy with IUCD *in-situ* or suspected pregnancy following contraceptive failure/MTP failure.
- v. Vaginal bleeding/leaking.
- vi. Follow-up of cases of abortion.
- vii. Assessment of cervical canal and diameter of internal os.
- viii. Discrepancy between uterine size and period of amenorrhea.
- ix. Any suspected adenexal or uterine pathology/abnormality.
- x. Detection of chromosomal abnormalities, fetal structural defects and other abnormalities and their follow-up.
- xi. To evaluate fetal presentation and position.
- xii. Assessment of liquor amnii.
- xiii. Preterm labor / preterm premature rupture of membranes.

- xiv. Evaluation of placental position, thickness, grading and abnormalities (placenta praevia, retro-placental hemorrhage, abnormal adherence, etc.).
- xv. Evaluation of umbilical cord–presentation, insertion, nuchal encirclement, number of vessels and presence of true knot.
- xvi. Evaluation of previous Caesarean Section scars.
- xvii. Evaluation of fetal growth parameters, fetal weight and fetal well being.
- xviii. Color flow mapping and duplex Doppler studies.
- xix. Ultrasound guided procedures such as medical termination of pregnancy, external cephalic version, etc. and their follow-up.
- xx. Adjunct to diagnostic and therapeutic invasive interventions such as chorionic villus sampling (CVS), amniocenteses, fetal blood sampling, fetal skin biopsy, amnio-infusion, intrauterine infusion, placement of shunts, etc.
- xxi. Observation of intra-partum events.
- xxii. Medical/surgical conditions complicating pregnancy.
- xxiii. Research/scientific studies in recognised institutions.

11. Procedures carried out (Non-Invasive) **(Put a “Tick” on the appropriate procedure)**

i. Ultrasound

(Important Note : Ultrasound is not indicated/ advised/ performed to determine the sex of fetus except for diagnosis of sex-linked diseases such as Duchene Muscular Dystrophy, Hemophilia A & B etc.)

- ii. Any other (specify)
12. Date on which declaration of pregnant woman/
person was obtained:.....
13. Date on which procedures carried out:
14. Result of the non-invasive procedure carried out
(*report in brief of the test including ultrasound carried
out*).....
15. The result of pre-natal diagnostic procedures was
conveyed toon.....
16. Any indication for MTP as per the abnormality
detected in the diagnostic procedures/ tests.....

Date: (.....)

Place: Name, Signature and Registration
Number with Seal of the
Gynaecologist/Radiologist/
Registered Medical Practitioner
performing Diagnostic Procedure/s

**Section C: To be filled for performing invasive
Procedures/Tests only**

17. Name of the doctor/s performing the procedure/s:
.....
18. History of genetic/medical disease in the family
(specify):..... Basis of diagnosis ("Tick" on
appropriate basis of diagnosis):
- | | |
|-----------------|--|
| (a) Clinical | (b) Bio-chemical |
| (c) Cytogenetic | (d) other (<i>e.g.</i> radiological,
ultrasonography, etc.
specify) |

19. Indication/s for the diagnosis procedure (**“Tick” on appropriate indication/s**):
- A. Previous child/children with:
- (i) Chromosomal disorders (ii) Metabolic disorders
 - (iii) Congenital anomaly (iv) Mental Disability
 - (v) Haemoglobinopathy (vi) Sex-linked disorders
 - (vii) Single gene disorder (viii) Any other (specify)
- B. Advanced maternal age (35 years)
- C. Mother/father/sibling has genetic disease (specify)
- D. Other (specify)
20. Date on which consent of pregnant woman / person was obtained in Form G prescribed in PC & PNDT Act, 1994:.....
21. Invasive procedures carried out (**“Tick” on appropriate indication/s**)
- i. Amniocentesis ii. Chorionic Villi aspiration
 - iii. Fetal biopsy iv. Cordocentesis
 - v. Any other (specify)
22. Any complication/s of invasive procedure (specify)...
23. Additional tests recommended (Please mention if applicable)
- (i) Chromosomal studies (ii) Biochemical studies
 - (iii) Molecular studies (iv) Pre-implantation gender diagnosis
 - (v) Any other (specify)
24. Result of the Procedures/ Tests carried out (report in brief of the invasive tests/ procedures carried out).....
25. Date on which procedures carried out:.....

26. The result of pre-natal diagnostic procedures was conveyed toon.....

27. Any indication for MTP as per the abnormality detected in the diagnostic procedures/tests.....

(.....)
Date: Name, Signature and Registration
Place: Number with Seal of the
Gynaecologist/Radiologist/Registered
Medical Practitioner performing
Diagnostic Procedure/s

Section D: Declaration

DECLARATION OF THE PERSON UNDERGOING PRE-NATAL DIAGNOSTIC TEST/ PROCEDURE

I, Mrs./Mr. declare that by undergoing Prenatal Diagnostic Test/ Procedure. I do not want to know the sex of my foetus.

(.....)
Date: Signature/ Thumb impression of
the person undergoing the
Prenatal Diagnostic Test/
Procedure

In Case of thumb Impression:

Identified by (Name)Age:..... Sex:.....
Relation (*if any*):..... Address & Contact No.:.....
Signature of a person attesting thumb impression:.....
Date:.....

DECLARATION OF DOCTOR/PERSON CONDUCTING PRE-NATAL DIAGNOSTIC PROCEDURE/TEST

I, (name of the person conducting ultrasonography/image scanning) declare that while conducting ultrasonography/image scanning on Ms./ Mr. (name of the pregnant woman or the person undergoing pre-natal diagnostic procedure/ test), I have neither detected nor disclosed the sex of her fetus to anybody in any manner.

Signature:.....

Date:.....

(.....)
Name in Capitals, Registration

Number with Seal of the
Gynaecologist/ Radiologist/
Registered Medical Practitioner
Conducting Diagnostic procedure

39. Thus, Form F, which is statutory in character, is detailed and exhaustive providing for recording of the entire spectrum of information necessary and relatable to all such pre-natal diagnostic procedures and tests.

40. Form F in its entirety have been held to be mandatory by this Court in *Federation of Obstetrics and Gynaecological Societies of India (FOGSI)*. This Court has held that non-maintenance of record is the springboard for commission of the offence of foeticide. Therefore, it can not

be brushed aside merely as clerical error. This Court held thus:

98. Non-maintenance of record is springboard for commission of offence of foeticide, not just a clerical error. In order to effectively implement the various provisions of the Act, the detailed forms in which records have to be maintained have been provided for by the Rules. These Rules are necessary for the implementation of the Act and improper maintenance of such record amounts to violation of provisions of Sections 5 and 6 of the Act, by virtue of proviso to Section 4(3) of the Act. In addition, any breach of the provisions of the Act or its Rules would attract cancellation or suspension of registration of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, by the appropriate authority as provided under Section 20 of the Act.

99. There is no substance in the submission that provision of Section 4(3) be read down. By virtue of the proviso to Section 4(3), a person conducting ultrasonography on a pregnant woman, is required to keep complete record of the same in the prescribed manner and any deficiency or inaccuracy in the same amounts to contravention of Section 5 or Section 6 of the Act, unless the contrary is proved by the person conducting the said ultrasonography. The aforementioned proviso to Section 4(3) reflects the importance of records in such cases, as they are

often the only source to ensure that an establishment is not engaged in sex determination.

100. Section 23 of the Act, which provides for penalties of offences, acts in aid of the other sections of the Act is quite reasonable. It provides for punishment for any medical geneticist, gynaecologist, registered medical practitioner or a person who owns a Genetic Counselling Centre, a Genetic Clinic or a Genetic Laboratory, and renders his professional or technical services to or at the said place, whether on honorarium basis or otherwise and contravenes any provisions of the Act, or the Rules under it.

101. Therefore, dilution of the provisions of the Act or the Rules would only defeat the purpose of the Act to prevent female foeticide, and relegate the right to life of the girl child under Article 21 of the Constitution, to a mere formality.

102. In view of the above, no case is made out for striking down the proviso to Section 4(3), provisions of Sections 23(1), 23(2) or to read down Section 20 or 30 of the Act. Complete contents of Form F are held to be mandatory. Thus, the writ petition is dismissed. No costs.

41. Let us now deal with the judgment of this Court in *Ravindra Kumar* heavily relied upon by learned senior counsel for the appellant. That was a case where the quashing petition filed by the appellant for quashing the FIR

and the complaint was rejected by the High Court against which the related appeal was filed. The specific challenge in that case was that the search and seizure carried out was that of the Chairman of the District Appropriate Authority and not by the appropriate authority. After referring to Sections 17, 23, 26, 28 and 30 of the PCPNDT Act, a two Judge Bench of this Court held that the appropriate authority is not required to record reasons for concluding that it has reason to believe that an offence under the PCPNDT Act has been or is being committed but there has to be a rational basis to form that belief. Importantly, the Bench held that the decision to take action under sub-section (1) of Section 30 must be of the appropriate authority and not of its individual members. In the facts of that case, it was found that under the notification dated 07.11.2013, the appropriate authority for the concerned District i.e. Gurugram consisted of the Civil Surgeon, the District Programme Officer of the Women and Child Development Department and the District Attorney, the Civil Surgeon being the Chairman of the appropriate authority. Looking at the object of sub-section (1) of Section 30 which the Bench

observed was a very drastic provision granting power to the appropriate authority or any officer authorised by it to enter a genetic laboratory, a genetic clinic or any other place to examine the record found therein, to seize the same, even to seal the same and the express language used therein, it has been held that only the Chairman or any other member acting alone cannot authorize a search under sub-section (1) of Section 30; it must be a decision of the appropriate authority. If a single member of the appropriate authority authorizes a search, it will be completely illegal being contrary to sub-section (1) of Section 30. In that case, it was found from the affidavit filed by the Chairman that the decision to conduct the search by appointing three officers was only his decision taken in his capacity as the Chairman of the appropriate authority; the other two members of the appropriate authority were not party to the said decision. In the facts of that case, it has been held that 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 which vitiated the search. Thereafter, on a perusal of the FIR and the complaint, the Bench concluded that these were

based entirely on the materials seized during the search. Except for what was found in the search and the seized documents, there was nothing to connect the appellant accused with the offence under Section 23 of the PCPNDT Act. After holding that as the search itself was illegal, continuing prosecution based on such an illegal search would amount to an abuse of the process of law, this Court quashed the FIR and the complaint.

41.1. Thus, the ratio in *Ravindra Kumar*, which is a two-Judge Bench decision of this Court, is that the decision to authorize a search under sub-section (1) of Section 30 must be that of the appropriate authority collectively. If a single member of the appropriate authority, and that includes the Chairperson, authorizes a search, it will be illegal being contrary to sub-section (1) of Section 30. Such a decision would vitiate the search rendering the same illegal. This is the ratio in *Ravindra Kumar*. The relief granted or the final directions issued are on the facts of the case and are not part of the *ratio decidendi*.

42. Having noticed the statutory framework and the two decisions of this Court, let us now revert back to the facts of the present case.

43. Government of Haryana in the Health Department had issued a notification dated 17.11.2013 exercising powers conferred by Section 17(3)(b) of the PCPNDT Act and in supersession of the previous notification dated 04.03.2009 appointing appropriate authority for the districts. The appropriate authority for each of the districts comprised of the following:

- (i) Civil Surgeon – Chairperson;
- (ii) District Programme Officer, Women and Child Development Department-Member; and
- (iii) District Attorney-Member.

44. A perusal of the communication/order dated 17.09.2015 (Annexure P-2 to the SLP paperbook) would show that it was a directive of the Civil Surgeon acting as the District Appropriate Authority, Gurugram, directing Shri Amandeep Singh Chauhan, District Child Officer and Shri Shyam Sunder of the District Red Cross Society, Gurugram

to conduct raid under the PCPNDT Act and to register the FIR.

45. From a careful reading of the communication/order dated 17.09.2015, it is true that it was issued by the Civil Surgeon, acting as the District Appropriate Authority, Gurugram. No doubt, the Civil Surgeon is the Chairperson of the District Appropriate Authority but this communication/order does not indicate any decision being taken collectively by the District Appropriate Authority to conduct raid in the premises of the appellant. Nothing has been placed on record by the respondents to show that there was any meeting of mind of the members of the District Appropriate Authority on the basis of which the Chairperson had issued the communication/order dated 17.09.2015. If that be the position, then the ratio in *Ravindra Kumar* would be applicable to this case as well on the basis of which the search carried out by the District Appropriate Authority, Gurugram at Vatika Medicare i.e. the premises where the appellant worked, would be illegal. However, the matter would not stop at that.

46. We have already noted that on the basis of the search itself, FIR was lodged against the appellant and Dr. Abdul Kadir being FIR No. 336 of 2015. Following investigation, the police filed an application before the learned Judicial Magistrate First Class on 28.10.2015 for discharge of the accused appellant. In the application, it was mentioned that appellant had conducted ultrasound on the decoy pregnant woman but had not done sex determination. Police noted that on examination of the record, some differences had been found though no secret talk between the appellant and Dr. Kadir was found. It was mentioned that for differences in the maintenance of record, there are separate provisions in the PCPNDT Act for filing a complaint case through the District Appropriate Authority. However, it was recorded that during investigation, it was found that Dr. Abdul Kadir had fraudulently taken money for the sex determination of the foetus of the pregnant woman from the shadow witness. Therefore, a case under Section 420 IPC and Section 23(3) of the PCPNDT Act was made out *qua* Dr. Abdul Kadir. In these circumstances, the investigating

authority i.e. the police sought for the discharge of the appellant.

46.1. Learned Magistrate accepted the said application and discharged the appellant and also released him from custody *vide* the order dated 28.10.2015.

47. The District Advisory Committee held a meeting on 17.12.2015 wherein a decision was taken that a complaint case be filed against Dr. Abdul Kadir, Dr. Naresh Garg (appellant) and Vatika Medicare for contravention of the provisions of the PCPNDT Act.

48. Pursuant thereto, complaint was filed by the District Appropriate Authority, Gurugram through Dr. Chitranjan, Deputy Civil Surgeon-cum-Nodal Officer on 18.09.2018 under Sections 4, 5, 6 and 29 of the PCPNDT Act read with Rules 9 and 10 of the PCPNDT Rules, all punishable under Section 23 of the aforesaid Act which was registered as COMA/47/591/2018. As already noted supra, the raid on the premises where the appellant worked for gain was carried out on 17.09.2015 which led to seizure of record etc. Section 23 of the PCPNDT Act says that for the

contravention of any of the provisions of the PCPNDT Act or the PCPNDT Rules, the maximum sentence is upto three years and with fine. Section 468(2)(c) CrPC has prescribed a period of limitation of three years for a competent court to take cognizance of an offence which is punishable with imprisonment for a term exceeding one year but not exceeding three years. Therefore, the limitation in this case was of three years. Since there was a delay of one day in the filing of the complaint, an application for condonation of delay was also filed for condoning the said delay. The learned Magistrate by order dated 18.09.2018 condoned the delay. Thereafter, the learned Magistrate passed an order dated 12.09.2022 issuing summons to the accused persons under Section 23 of the PCPNDT Act by taking the view that there are sufficient grounds for proceeding against the two accused persons including the appellant.

49. Repelling the challenge made by the appellant, the High Court *vide* the impugned judgment and order held that the District Appropriate Authority had implemented the recommendation of the District Advisory Committee under Section 17 of the PCPNDT Act whereafter the District Appropriate

Authority exercising power under Rule 18A of the PCPNDT Rules had authorized Dr. Chitranjan, Deputy Civil Surgeon for filing of the complaint. High Court has held that the procedure adopted cannot be said to be in contravention of the PCPNDT Act as per authorization given to Dr. Chitranjan on 17.09.2018.

50. While there is infraction of Section 30 of the PCPNDT Act *qua* the search carried out by the respondents on Vatika Medicare in as much as it was an individual decision of the Chairperson instead of being the collective decision of the District Appropriate Authority which has vitiated the search, and in this connection we are bound by the ratio laid down by the Coordinate Bench in *Ravindra Kumar*; we are however of the view that the evidence collected in the course of the search in the form of the seized record etc cannot be discarded altogether, like the baby with the bath water. While the search may be illegal, the materials or evidence gathered or collected in the course of such search can still be acted or relied upon subject to the rule of relevancy and the test of admissibility. We are

fortified in adopting such a view by several decisions of this Court a couple of which are by Benches of larger strength.

51. In *Radha Kishan Vs. State of Uttar Pradesh*³, a three-Judge Bench of this Court in the context of search operations in the premises of the appellant under Section 103 and 165 of the old Cr.P.C. which accidentally led to discovery of a large number of letters and postcards, held that even if it is assumed that the search was illegal, the seizure of the articles is not vitiated. Of course, because of the illegality of the search, the court may be inclined to examine carefully the evidence regarding the seizure. This Court held thus:

5.....So far as the alleged illegality of the search is concerned it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Sections 103 and 165 of the Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further

³ AIR 1963 SC 822

consequence ensues. The High Court has chosen to accept the evidence of the prosecution with regard to the fact of seizure and that being a question to be decided only by the court of fact, this Court would not re-examine the evidence for satisfying itself as to the correctness or otherwise of the conclusions reached by the High Court.....

52. *R.M. Malkani Vs. State of Maharashtra*⁴ is a two-Judge Bench decision of this Court. In that case, this Court was examining admissibility of tape recorded conversation. In that context, this Court held that tape recorded conversation is admissible provided, firstly, the conversation is relevant to the matter in issue; secondly, there is identification of the voice; and thirdly, the accuracy of the tape recorded conversation is proved. Rejecting the contention of the appellant that the tape recorded conversation was obtained by illegal means, this Court held that even if evidence is illegally obtained, it is admissible. However, by expressing a word of caution, this Court observed that the Judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused.

⁴ 1973 (1) SCC 471

This Court referred to with approval its earlier decision in *Magraj Patodia Vs. R.K. Birla*⁵ which held that a document which was procured by improper or even by illegal means could not bar its admissibility provided its relevance and genuineness were proved. Referring to English decisions, this Court held that as long as evidence is not tainted by an inadmissible confession of guilt evidence even if it is illegally obtained is admissible.

53. A Constitution Bench of this Court in *Pooran Mal Vs. Director of Inspector (Investigation), New Delhi*⁶ was examining a challenge to search and seizure of certain premises under Section 132 of the Income Tax Act, 1961 on the ground that the authorisation for the search as also the search and seizure were illegal. After referring to various provisions of the Indian Evidence Act, 1872, this Court opined that it had permitted relevancy as the only test of admissibility of evidence; the Indian Evidence Act or any other similar law in force does not exclude relevant evidence on the ground that it was obtained under an illegal search

⁵ AIR 1971 SC 1295

⁶ (1974) 1 SCC 345

or seizure. Elaborating further, this Court held that courts have a discretion to admit evidence obtained as a result of illegal search. Unless there is an express or necessarily implied prohibition in law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. Finally, the Constitution Bench concluded as under:

25. In that view, even assuming, as was done by the High Court, that the search and seizure were in contravention of the provisions of Section 132 of the Income Tax Act, still the material seized was liable to be used subject to law before the Income tax authorities against the person from whose custody it was seized and, therefore, no Writ of Prohibition in restraint of such use could be granted. It must be, therefore, held that the High Court was right in dismissing the two writ petitions. The appeals must also fail and are dismissed with costs.

54. Before finally concluding our discussion, we may also deal with two more submissions advanced by learned senior counsel for the appellant. Submission of Mr. Bhalla, learned senior counsel, is that though FIR No. 336 dated 17.09.2015 was registered against Dr. Abdul Kadir and the appellant following the illegal raid, the appellant was discharged by the learned Magistrate on the basis of an

application filed by the police itself. The contention is that after discharge of the appellant, the criminal complaint is not maintainable since it is based on the same set of facts. We are afraid such a submission cannot be accepted. Section 28(1) of the PCPNDT Act, which we have already taken note of supra, specifically says that no court shall take cognizance of an offence under the PCPNDT Act except on a complaint made by the appropriate authority or by any officer authorized by the appropriate authority etc. Further, as per Rule 18A (3) (iv) of the PCPNDT Rules, the appropriate authority should not involve police for investigating cases under the PCPNDT Act as the cases under this Act are tried as complaint cases under the CrPC. In any case, the police in the discharge application mentioned that appellant had infact conducted ultrasound on the decoy pregnant woman but had not carried out sex determination. However, police investigation revealed discrepancies in the maintenance of record for which it was pointed out that there are provisions in the PCPNDT Act for filing of a complaint case. We have already noted that as per the proviso to sub-section (3) of Section 4 of the PCPNDT Act, it is the duty of the person

conducting ultrasonography on a pregnant woman to keep complete record thereof in the clinic in such manner as may be prescribed and any deficiency or inaccuracy found therein shall amount to contravention of Sections 5 or 6 of the PCPNDT Act. Burden is on the person conducting such ultrasonography to prove to the contrary. Similarly, Rule 9(1) read with Rule 9(4) and Rule 10(1A) of the PCPNDT Rules mandate the person conducting ultrasonography on a pregnant woman to maintain the complete record of such procedure in the prescribed format, the failure of which would be construed to be an offence under Section 23 of the PCPNDT Act. That apart, this Court has held that complete contents of Form F are mandatory. Therefore, discharge of the appellant in the police case would be of no consequence.

55. It is also the submission of learned senior counsel for the appellant that the raiding party comprised of Dr. Saryu Sharma, Deputy Civil Surgeon, Gurugram who was also made a member of the District Advisory Committee. It is the contention of the appellant that such duality of role assigned to Dr. Saryu Sharma is illegal which not only vitiated the raid but also the decision to file the criminal

complaint. Such a submission has no basis at all. Rule 18A lays down certain guidelines in the form of code of conduct to be observed by the appropriate authorities. As per Rule 18A(2)(ii), all appropriate authorities shall ensure that a person who is part of the investigating machinery in cases under the PCPNDT Act shall not be nominated or appointed as a member of the advisory committee. Thus, Rule 18A(2)(ii) is applicable only to a person who is part of the investigating machinery in cases under the PCPNDT Act. Dr. Saryu Sharma was never a part of any investigating machinery. Therefore, there is no contravention of Rule 18A(2)(ii) of the PCPNDT Rules. In any case, going by language of Rule 18A, those guidelines can only be termed as directory being part of the general code of conduct to be observed by appropriate authorities, violation of which may render a proceeding irregular but not illegal. However, as we have seen in this case, there is no violation of Rule 18A(2)(ii) inasmuch as Dr. Saryu Sharma was not a part of any investigating machinery.

56. Discrimination against the girl child and by extension women is still prevalent in several parts of the country. Crude and ugly manifestation of such social

malady is in the form of female foeticide. The first step towards commission of such an offence is in the sex determination of the foetus. Therefore, the Parliament has stepped in not only outlawing sex determination and selection but also prohibiting all related pre-conception and pre-natal techniques and procedures, making it mandatory to maintain the relevant record in the prescribed format. Non-maintenance of the record in the prescribed form would be an offence under the PCPNDT Act and the Rules. In so far the present case is concerned, *prima facie* it has come on record that appellant had conducted ultrasonography on the pregnant woman. Whether or not he has maintained the record as required under the law in addition to non-disclosure of the sex of the foetus is a matter for trial. Therefore, it is not a case where the trial should be nipped in the bud.

57. Thus, having regard to the discussions made above and for the reasons recorded, the criminal complaint bearing No. COMA/116/2018 pending before the Judicial Magistrate First Class, Gurugram cannot be quashed. Therefore, no interference is called for in the impugned judgment and order

of the High Court. However, we make it clear that we have not expressed any opinion on merit of the allegations and all contentions *qua* reliability and admissibility of evidence are kept open.

58. Subject to the above, the criminal appeal is dismissed. However, there shall be no order as to cost.

.....J.
[MANOJ MISRA]

.....J.
[UJJAL BHUYAN]

**NEW DELHI;
FEBRUARY 23, 2026.**