ABC 2016 (II) 598 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(A. V. Nirgude & V.L. Achliya, JJ.)

Criminal Writ Petition No. 1381 of 2015

Decided on 27 September, 2016

Aurangabad Bench

DR. SAI SANTOSH SHIRADKAR ***- Petitioner(s).***

Versus

STATE OF MAHARASHTRA & ANR. ***- Respondent(s).***

Law Covered:- ***(A) Code of Criminal Procedure — Section 482— Quashing of complaint — Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Sections 4, 5, 6, 29 — Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 — Rule 9, 10-A & 18 — no allegations — that the written consent was not obtained before conducting the procedure—Certain omissions in the consent forms —mobile number was not mentioned — Thumb impression was not attested— No complaints of conducting the procedure without obtaining the consent and not giving copy of the consent form to such woman—not the case that Appropriate Authority had investigated any complaint received or conducted inquiry on its own— Complaint quashed. (Para 19)***

(B) Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 5 —Requirement under — the written consent of the pregnant woman to be obtained before conducting the pre-natal diagnostic procedure as well as the manner in which the consent to be obtained. (Para 19)

(C) Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 5(1)(a) — Requirement under — Person conducting pre-natal diagnostic techniques shall not conduct the said procedure — unless such pregnant woman explained of known side and after effects of such procedure. (Para 19)

(D) Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 5(1)(b) —Requirement under — the person conducting the pre-natal diagnostic technique shall not conduct the procedure unless he has obtained the consent of such

woman to undergo such procedure in the language which she understands — & copy of her written consent is given to such woman. (Para 19)

(E) Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 — Rule 5 — Omission of— Rule is not attracted on the face of the allegations made in complaint filed against the petitioner. (Para 19)

(F) Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 6 — violation of — Nowhere disclosed in the complaint that the petitioner has conducted any pre-natal diagnostic procedure for determining the sex of the foetus — before or after conception —Sec 6 not violated. (Para 19)

(G) Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 29 —Requirement under — the record as required to be maintained —or to be preserved for two years —or such period and such record is to be made available for such inspection —at all reasonable times, for the inspection of the Appropriate Authority or person authorized by the Appropriate Authority. (Para 20)

(H) Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994— Section 29 —Offence under — No allegations that the appellant destroyed the record before the period prescribed under the said provisions— Mistakes in maintenance of record — Detailed explanation by the petitioner — Section 29 not violated —of the said Act is not attracted. (Para 20)

(I) Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 — Rule 9 — Requirement under — before conducting pre-natal diagnostic techniques/test/ procedure, the written consent as specified in the Form and in a language known to person undergoing such procedure shall be obtained from such person. (Para 21)

(J) Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 5 — Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 — Rule 9 — Violation of — Unintentional & inadvertent mistakes in not recording certain details itself not amounts to violation of Section 5 . (Para 21)

(K) Code of Criminal Procedure — Section 482— Quashing of complaint — Pre-conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Sections 4, 5, 6, 29 — Pre-

conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 — Rule 9, 10-A & 18 — Petitioner was following the procedure to obtain the consent of the pregnant woman in a prescribed proforma —certain information found to be not recorded — complete address, mobile number was not recorded. — prosecution initiated against the petitioner is not sustainable in law —allegations made are so absurd that no prudent person can ever reach to conclusion that there are sufficient grounds to proceed against the petitioner— Complaint quashed. (Para 21 & 22)

Facts:- *The Ultrasonography Centre of the petitioner, who was a practicing Doctor, was inspected by Vigilance Squad and certain deficiencies were recorded. Based upon the report of inspection, the show-cause notice was issued to petitioner. Petitioner has responded the said notice and given detailed explanation to each of the deficiencies noted in the show-cause notice. The Advisory Committee in its meeting discussed the matter and decided to suspend the registration of petitioner's Sonography Centre and further decided to initiate prosecution against her. Accordingly, the complaint was filed in the court of CJM. The learned Chief Judicial Magistrate was pleased to issue process u/s 4, 5, 6, 29 r/w Rule 9, 10-A & 18 of the said PCPNDT Act & Rules against accused. Being aggrieved, the petitioner preferred the present petition seeking setting aside the order of issuance of process and quashing of criminal proceedings.*

It was observed by the honourable Bombay High Court that the prosecution initiated against the petitioner is not sustainable in law as the allegations made in the complaint do not constitute any offence as alleged. Finding no sufficient grounds to proceed against the petitioner the complaint was quashed.

Law of relief:- ***Unintentional & inadvertent mistakes in not recording certain details itself not amounts to violation of Section 5 of PCPNDT Act.***

Held:- In this view, we proceed to examine as to whether the complaint discloses the commission of offence u/s 5, 29 and Rule 9 of the PCPNDT Act. Section 5 provides that, the written consent of the pregnant woman to be obtained before conducting the pre-natal diagnostic procedure as well as the manner in which the consent to be obtained. Section 5(1)(a) provides that, person conducting pre-natal diagnostic techniques shall not conduct the said procedure unless such pregnant woman explained of known side and after effects of such procedure. In the case in hand, there are no such allegations

against the petitioner nor there was any complaint to that effect against the petitioner. Section 5(1)(b) provides that, the person conducting the pre-natal diagnostic technique shall not conduct the procedure unless he has obtained the consent of such woman to undergo such procedure in the language which she understands and copy of her written consent is given to such woman. In the case in hand, there are no allegations that the written consent was not obtained before conducting the procedure. The allegations made against the petitioner confines to certain omissions in the consent forms filled in & obtain from such woman in which it was found that mobile number was not mentioned and in one case thumb impression was not attested. It is nowhere the case of the respondents that there were complaints against petitioner of conducting the procedure without obtaining the consent and not giving copy of the consent form to such woman. Though the petitioner was found to be following the prescribed procedure and obtaining the written consent but, proper care was not taken to fill in the complete information in the form such as full address, mobile number and attestation. It is also not the case that Appropriate Authority had investigated any complaint received or conducted inquiry on its own wherein the petitioner was found violating the provisions of Sections 5 and 29 & Rule 9 of the said Act & Rules. What has been observed by the Vigilance Committee that, some information which was required to have been mentioned in detail in respect of the patient has not been recorded. In this view the contravention of Rule 5 of the said Rules is not attracted on the face of the allegations made in complaint filed against the petitioner. On the contrary it transpires from report of Vigilance Squad that, the petitioner was following the procedure to obtain the consent in a prescribed proforma of the pregnant woman undergoing diagnostic techniques. Therefore, the violation of Section 5 of the said Act cannot be inferred on the face of the allegations made in the complaint. Similarly the allegations made in the complaint nowhere discloses the commission of offence u/s 6 of said Act to the effect that the petitioner has conducted any pre-natal diagnostic procedure for determining the sex of the foetus before or after conception & violated the provision. (Para 19)

Section 29 of the PCPNDT Act provides that the record as required to be maintained or to be preserved for two years or such period and such record is to be made available for such inspection at all reasonable times, for the inspection of the Appropriate Authority

or person authorized by the Appropriate Authority. The allegations made in the complaint nowhere discloses that the petitioner was found to be acted in violation of Section 29 and destroyed the record before the period prescribed under the said provisions. As discussed, the allegations as made against the petitioner are that, certain mistakes found in maintenance of record for which the petitioner has given detailed explanation. Therefore, on the face of the allegations made in the complaint the violation of Section 29 of the said Act is not attracted. (Para 20)

So far as Rule 9 of said Rules is concerned, it provides that before conducting pre-natal diagnostic techniques/test/procedure, the written consent as specified in the Form and in a language known to person undergoing such procedure shall be obtained from such person. As discussed, the Committee has found that though the petitioner was found to following the procedure to obtain the consent of woman in the prescribed proforma but certain information found to be not recorded. What has been observed by the Committee that while filling up the Form G certain information such as complete address, mobile number was not recorded. Not obtaining consent in prescribed proforma invites violation of Section 5 as well as Rule 9 of the said Act & Rules. However, unintentional & inadvertent mistakes in not recording certain details as discussed above itself not amounts to violation of Section 5 r/w Rule 9 of the said Act & Rules framed thereunder. (Para 21)

Counsel:- ***For Petitioner(s):*** *Mr Rajendra S. Deshmukh, Advocate.*

For Respondent(s): *Mr A. R. Borulkar, APP & Mr R. K. Ingole Patil, Advocate.*

Cases Referred:-

Dr. Uma Shankarrao Rachewad Vs. Appropriate Authority reported in 2012 Cri.L.J. 2634. (Para 18)

JUDGMENT

V.L. ACHLIYA, J.: - Rule. Rule made returnable forthwith. By the consent, heard finally at the admission stage.

2. Petitioner herein has preferred this petition under Article 226 and 227 of the Constitution of India and Section 482 of the Criminal Procedure Code seeking quashing of RCS NO. 265/2015 pending on the file of CJM, Nanded, on the grounds set out in detail in the petition.

3. Petitioner herein claims to be Doctor by profession and practices at Nanded. She possesses the educational qualification as MBBS and DGO. Petitioner started her practice at Nanded since August 2013. She has installed Sonography machine in her Hospital known as "Suyog Hospital" at Nanded. She claims that, the Sonography centre established by her is duly registered with the Health Department and the certificate of registration is valid for the period 11.11.2013 to 10.11.2018.

4. On 26.2.2015, the members of the Regional Vigilance Squad, Aurangabad, inspected the Ultrasonography Centre of the petitioner and recorded following deficiencies.

(i) Referral slip with respect to one pregnant woman is not found.

(ii) Serial number is not given to the Form 'F'.

(iii) Signature of Smt. Ranjana Tode, R/o Sonari is not found on the Consent Form dated 07/02/2015.

(iv) Sonography Date : 25/02/2014, signature of petitioner Doctor on the Consent Form of smt. Indu Shinde, R/o. Bhim Nagar is found contrast. So also, mobile number is not found on the 'F' Form.

(v) Sonography dated: 31/12/2013, signature of Petitioner Doctor on the Consent Form of Smt. Salma Parveen, R/o Mudhked is found contrast. So also detailed address is not found on the 'F' Form.

(vi) Difference is found on Form 'F' of Smt. Vanashri Jalnekar, R/o Gavalipura, Nanded, in the two dates i.e. 01/01/2013 and 01/01/2014. The signature of Petitioner Doctor on the Consent Form and Form 'F' is found contrast. Mobile number is not found on the said 'F' Form.

(vii) Sonography Date: 12/03/2014, Detailed address of Smt. Priya Shinde, R/o Girgaon is not found on 'F' Form. So also, signature of Petitioner Doctor is not found on the Consent Form.

(viii) Sonography Date: 05/12/2014, Detailed address of Smt. Afreen Fatema is not found on the Form 'F'.

(ix) Sonography Date: 17/12/2014, Detailed address of Smt. Vaishali Patange, R/o. Dhavoda, Kalamnoori is not found on the Form 'F'.

(x) Sonography Date: 09/12/2014, Smt. Anju Kishor Sawant, Date of sonography was not found on the Form 'F'. Detailed address was not found.

(xi) Sonography Date: 08/12/2014, Smt. Jyoti Santosh Waghmare. Detailed address and mobile number were not noted.

(xii) Sonography Date: 08/12/2014, Smt. Begum Abdul Razakk. The thumb impression of the pregnant woman was not attested. Detailed address and mobile number were not found.

(xiii) 9-1 Register was not available in the said Centre.

5. Based upon the report of inspection, wherein the Vigilance Committee has noted the violation of Sections 4, 5, 6 and 29 of the Pre -conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter to be referred as "said Act") & and Rule 9, 10(1-A) and 18 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter to be referred as "the said Rules"), the show-cause notice as contemplated u/s 20(1) of the said Act, was issued to petitioner. Petitioner has responded the said notice and given detailed explanation to each of the deficiencies noted in the show-cause notice. The Advisory Committee in its meeting dt. 01.04.2015 discussed the matter and decided to suspend the registration of petitioner's Sonography Centre and further decided to initiate prosecution against her. Accordingly, the complaint was filed in the court of CJM, Nanded. Vide order dt. 28.06.2015, the learned Chief Judicial Magistrate, Nanded pleased to issue process u/s 4, 5, 6, 29 r/w Rule 9, 10-A & 18 of the said Act & Rules against accused. Being aggrieved, the petitioner has preferred this petition seeking setting aside the order of issuance of process and quashing of criminal proceedings.

6. Mr Deshmukh, learned counsel for the petitioner, strenuously contended that the impugned order passed by the Magistrate is without application of mind. He has contended, that on the face of allegations made in the complaint together with the documents relied, no offence under any of the provisions of the PCPNDT Act & Rules made thereunder is made out against the petitioner. The complaint is filed by person who was not notified as

Appropriate Authority u/s 17 of PCPNDT Act and, therefore, the ld. Magistrate should not have taken the cognizance of the complaint. The search and inspection carried out by the alleged Vigilance Squad was without any authority of the law and contrary to the provisions of the said Act & Rules made thereunder. He has submitted that, the discrepancies as noted by the Vigilance Committee cannot be termed as violation of any of the provisions of the PCPNDT Act & Rules thereunder. At the most, the discrepancies as alleged can be treated as clerical and arithmetical irregularities which itself not amounts to violation of any of the provisions of the PCPNDT Act & Rules thereunder. The report of the committee at the most treated as certain irregularities in maintenance of the record & directed the petitioner to rectify. None of the irregularities make out a case for initiation of criminal proceedings against the petitioner.

7. On the other hand, the ld. APP for the State and the counsel representing the respondent No. 2 supported the action taken by respondent No. 2 and the order passed by ld. Magistrate. On behalf of respondent No. 2, the affidavit-in-reply is filed by Medical Health Officer, Nanded-Waghela Municipal Corporation, Nanded claiming as Appropriate Authority notified under the PCPNDT Act. In nutshell, it is contended that, the deficiencies as noted by the Vigilance Committee prima facie attract the offence u/s 4, 5, 29 & Rule 9, 10 (1-A) & 29 of the said Act & Rules thereunder. In reply dt. 09.03.2015 filed by the petitioner in response to the show-cause notice dt. 04.03.2015, the petitioner has admitted all the deficiencies as found during the course of inspection. The report clearly points out that the petitioner has deliberately avoided to keep the record of patients as per the requirement of provisions of PCPNDT Act & Rules thereunder. During the inspection, it was also found that the petitioner has not uploaded the Form No. "F" on PCPNDT Maha Online Link for the month of January-2015 and for the month of December-2014. The report of Sonography was shown as seven whereas petitioner has uploaded eight Form-F on said link, which itself shows that the grave deficiencies committed on the part of the petitioner.

8. The challenge raised in this petition confines to criminal proceedings filed against the petitioner. So far as order dt. 15.04.2015 passed by the Appropriate Authority suspending the registration of petitioner's Sonography Centre is concerned, the petitioner has

challenged the said action before the appellate authority constituted under the said Act. Therefore, the limited question falls for our consideration is even if the allegations made in the complaint taken at their face value and accepted in their entirety prima facie made out any offence under the provisions of the PCPNDT Act & Rules thereunder as alleged in the complaint & further the complainant was duly authorized to file complaint against the petitioner.

9. We have perused the complaint dt. 30.04.2015 filed by the Nanded-Waghala Municipal Corporation, through its Medical Health Officer - Smt. Meera Ashish Kulkarni, who claims to be Appropriate Authority notified under Section 17(2)(iii) of the PCPNDT Act by the State Government by virtue of notification dt. 03.02.2006 issued by Public Health Department of State Government. In the complaint filed, it is alleged that on 26.02.2015, the Vigilance Squad has inspected the Sonography Centre run by the petitioner and noted the discrepancies. On consideration of the report of the Inspection Committee, it was prima facie found that, the petitioner has committed breach of Sections 5, 29 and Rules 9 of the said Act & Rules and, therefore, the show-cause notice as contemplated under Section 20(1) of the said Act was issued. In response to the show-cause notice, the petitioner has filed reply before the Advisory Committee. As the Committee was satisfied that the petitioner has violated the provisions of Sections 4, 5, 6, 29 and Rules 9, 10 (1-A) and 18 of the said Act & Rules, it was decided to suspend the license to run the Sonography Centre and to seal Sonography machine and it was further decided to prosecute the petitioner. Thus, the complaint filed by the respondent No. 2 is wholly based upon the discrepancies noted by the Vigilance Squad during the inspection carried out on 26.06.2015. We have therefore to examine as to whether the deficiencies as noted by the Vigilance Committee attract offence under Sections 4, 5, 6 and 29 and Rules 9, 10(1-A) and 18 of the said Act & Rules. In order to appreciate the submissions advanced, it is useful to refer the said provisions, which reads as under.

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

(1) no place including a registered Genetic Counselling Centre or Genetic Laboratory of 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) heamoglobinopathies

(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 of physical deformities such as, spasticity or any other genetic disease;

(v) any other conditions 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 provisions of section 5 of 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.]

S 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.]

S 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 Clink, 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 personal shall, y whatever means, cause or allow to be caused selection of sex before or after conception.]

S 29. Maintenance of records.-

(1) All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed:

Provided that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory or Genetic Clink, the records and all other documents of such Centre, Laboratory or Clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf.

R 9. Maintenance and preservation of records.-

(1) Every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic shall maintain a register showing, in serial order, the names and addresses of the women given genetic counseling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their husbands or fathers and the date on which they first reported for such counseling, procedure or test.

(2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counseled shall be as specified in Form D. (3) The record to be maintained by every Genetic Laboratory, in respect of each woman subjected to any pre-natal diagnostic test, shall be as specified in Form E.

(4) The record to be maintained by every Genetic Clinic, in respect of each woman subjected to any pre-natal diagnostic procedure, shall be as specified in Form F.

(5) The Appropriate Authority shall maintain a permanent record of applications for grant or renewal of certificate of registration as specified in Form H. Letters of intimation of every change of employee, place, address and equipment installed shall also be preserved as permanent records. (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 or Genetic

Clinic for a period of two years from the date of completion of counseling, 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.

(7) In case the Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.

R 10(1-A). Any person conducting ultrasonography/image scanning on a pregnant woman shall give a declaration on each report on ultrasonography/image scanning that he/she has neither detected nor disclosed the sex of foetus of the pregnant woman to anybody. The pregnant woman shall before undergoing ultrasonography/ image scanning declare that she does not want to know the sex of her foetus.]

R 18. Code of Conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics, Imaging Centres etc.- All persons including the owner, employee or any other person associated with Genetic Counselling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics, Imaging Centres registered under the Act/these Rules shall-

(i) not conduct or associate with, or help in carrying out detection or disclosure of sex of foetus in any manner;

(ii) not employ or cause to be employed any person not possessing qualifications necessary for carrying out pre-natal diagnostic techniques/procedures and tests including ultrasonography;

(iii) not conduct or cause to be conducted or aid in conducting by himself or through any other person any techniques or procedure for selection of sex before or after conception or for detection of sex of foetus except for the purposes specified in sub-section (2) of section 4 of the Act;

(iv) not conduct or cause to be conducted or aid in conducting by himself or through any other person any

techniques or test or procedure under the Act at a place other than a place registered under the Act/the Rules;

(v) ensure that no provision of the Act and these Rules are violated in any manner;

(vi) ensure that the person conducting any techniques, test or procedure leading to detection of sex of foetus for purposes not covered under section 4(2) of the Act or selection of sex before or after conception, is informed that such procedures lead to violation of the Act and the Rules which are punishable offences;

(vii) help the law enforcing agencies in bringing to book the violators of the provisions of the Act and the Rules;

(viii) display his/her name and designation prominently on the dress worn by him/her;

(ix) write his/her name and designation in full under his/her signature;

(x) on no account conduct or allow/cause to be conducted female foeticide;

(xi) not commit any other act of professional misconduct.

10. Thus, if we consider the provisions of Section 4(3) of the said Act, then it prohibits use of Pre-natal Diagnostic Techniques by the qualified persons unless such person is satisfied with the reasons to be recorded in writing that any of the conditions enumerated in clauses (i) to (v) of said Section 4, are fulfilled. Proviso to sub-section 3 of Section 4 creates a statutory obligation on the person conducting ultrasonography on a pregnant woman to keep complete record thereof in the clinic in such a manner as may be prescribed and any deficiency or inaccuracy found therein shall amount to contravention of provisions of Section 5 or Section 6unless contrary is proved by the person conducting ultrasonography. Section 5 provides that the written consent of the pregnant woman must be obtained by the person before conducting the pre-natal diagnostic procedure for conducting such diagnostic procedure. The consent to be obtained must be in writing and in a form prescribed and the language which she understands. The copy of same to be given to such pregnant woman and further she be explained and made known side and after effects of such procedure. Section 6 of the said Act prohibits

determination of sex of foetus by use of pre-natal dignostic techniques including the ultrasonography. Section 29provides an obligation of maintenance of record as required to be maintained under the provisions of said Act for a period of two years and such record be made available at all reasonable times for inspection by the Appropriate Authority or to any other person authorized by the Appropriate Authority in their behalf. Rule 9 of the said Rules provides for maintenance and preservation of record by every Genetic Counselling Centre, Genetic Laboratory, Ultrasound Clinic and Imaging Centre in the form of register showing, serial number, the names and addresses of the men or women given genetic counseling or subjected to pre- natal diagnostic procedures or pre-natal diagnostic tests. Sub-rule 2 of Rule 9 provides that, the record to be maintained by every Genetic Counselling Centre, in respect of each woman counselled shall be as specified in Form 'D'. Sub-rule 3 of Rule 9 provides that, the record to be maintained by every Genetic Laboratory, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form 'E'. Sub-rule 4 of Rule 9 provides that the record to be maintained by every 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. Sub-rule 5 of said Rules provides obligation on Appropriate Authority to maintain permanent record regarding grant or renewal etc. Sub-rule 6 of Rule 9 provides for maintenance and preservation of records related to forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters 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 case such legal proceedings initiated against such centre or till expiry of period of two years whichever is later. Sub-rule 7 of Rule 9 prescribes that Genetic Counseling Centre or Genetic Laboratory or Genetic Clinic or Ultrasound Clinic or Imaging Centre it maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record. Sub-rule 8 of said Rue provides that, such such Genetic Counseling Centre, Gentic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall send a complete report in respect of all pre- conception or pregnancy related procedures/ technique/tests conducted by them in each month by 5th day of the

following month to the concerned Appropriate Authority. Rule 10 (1-A) provides that, any person conducting ultrasonography/image scanning on a pregnant woman shall give a declaration on each report on ultrasonography/image scanning that he/she has neither detected nor disclosed the sex of foetus of the pregnant woman to anybody. The pregnant woman shall, before undergoing ultrasonography/ image scanning, declare that she does not want to know the sex of foetus. Rule 18 of the said Rules provides for code of conduct to be observed by the persons working at Genetic Counselling Centre, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics, Imaging Centres etc.

11. In order to appreciate the submissions advanced, we have carefully examined the allegations made in the complaint as stated above. The basis of the complaint is the outcome of inspection carried out by the Vigilance Squad on 26.02.2015, which has noted the discrepancies as referred above.

12. So far as the deficiency referred at Sr. No. (i) in the report of inspection referred above, the petitioner has offered explanation vide reply dt. 09.03.2015 wherein she has stated that as she conducts sonography on her own patients and not entertain the patients referred from outside, the Reference Slip was not found by the committee. She has stated that, she has recently started the ultrasonography centre and not aware that the Reference Slip of her own patients also required to be kept on record and expressed that, henceforth she will attach her own patients' reference slip along with the form. So far as the discrepancy noted at Sr. No. (ii) that, serial number was not given to the form F, she has offered an explanation that it was inadvertently remained to be given and for that she has expressed her regret and assured that in future, she will not commit such a mistake. The discrepancy noted at Sr. No. (iii) & (iv), the petitioner has offered explanation that, on the form 'F' filled in, due to oversight the signature of the patient remained to be obtained and inadvertently the mobile number of said patient remained to be mentioned in Form 'F'. However, the mobile number of the said patient was noted in the OPD Book along with the address. So far as the discrepancy noted at Sr. No. (v), the petitioner has offered explanation that the difference in her signature was due to the reason that she makes two different signatures one for bank purpose and other for routine work. Therefore, two different signatures appear on

consent forms. So far as recording of complete address of the person is concerned, she has offered explanation that the patient was resident of Mudkhed, Tq. Nanded, within the Nanded district. She was not in a position to give complete address. Therefore, the address as disclosed by her was recorded in the consent form. In respect of deficiency noted in clause (vi), the petitioner has offered explanation that the discrepancy as to date 1.1.2014 & 1.1.2013 was occurred inadvertently as it was the first date of new year inadvertently in place of 1.1.2014, the date was mistakenly recorded as 1.1.2013. She has further offered explanation that, the patient was wife of his brother who delivered a baby on 15.5.2015. Inadvertently the mobile number of said patient remained to be mentioned. So far as the difference in her signature, she has offered an explanation that as she uses different signatures for bank and other routine work, the difference in signature found on the Form F. In the reply, she has also mentioned phone number of said patient. So far as discrepancy noted in clause (vii), the petitioner has offered explanation that inadvertently signature remained to be made on form F. She has further stated that, the address of the patient was R/o Girgaon, Tq. Basmat, Dist. Hingoli and inadvertently in front of her name the name of her village is only recorded and name of taluka and district was not mentioned. She has given complete address of the patient as Girgaon, Tq. Basmat, Dist. Hingoli. In respect of the discrepancy noted in clause (viii), she has stated that, inadvertently detailed address of the patient remained to be recorded on Form 'F' and the detailed address of the patient to be given as Khudbainagar, Degloor Naka, Nanded. She has mentioned that, inadvertently the word 'Nanded' remained to be mentioned in the Form of Smt. Fatima. So far as discrepancy noted in clause (ix), she has mentioned that the address which was given by the patient was Dhawanda, Tq. Kalamnuri, Dist. Hingoli and she has visited her Sonography Centre in advanced stage of pregnancy i.e. 9 th month of pregnancy and she gave birth to child in her hospital on 29.12.2014. So far as discrepancy noted at Sr. No. (x), the petitioner has offered explanation that, inadvertently the date of carrying out sonography i.e. 09.12.2014 remained to be mentioned on the Form F. She has further averred that, the detail address of the said patient was mentioned in her OPD register but same was remained to be recorded in Form F due to inadvertence. So far as discrepancy noted in clause no. (xi), the petitioner has offered an explanation that the woman was unable to tell her address. She has stated that, as she has recently

changed the house, she was not remembering her address and keeps mobile phone and therefore the complete address and mobile number could not be mentioned. In respect of the discrepancy noted at sr. no. (xii), the petitioner has offered explanation that said woman visited her clinic in advanced stage of pregnancy i.e. 9 th month, nobody was accompanied her. She was not able to read and write, therefore, she could not obtain attestation of her relatives. Due to advanced stage of pregnancy and the moments of the child was found to be slowed down, she was required to conduct sonography test. Since the woman has not provided the mobile number and complete address, the detailed address could not be mentioned on the form F. So far as the discrepancy noted at sr. no. (xiii) concerned, the petitioner has stated that as the register was kept in the Cupboard and she was out of station, the staff of the Hospital could not produce the register at the time of visit of Inspection Committee. She has assured to take note of the mistakes and ensure that no such mistakes will be committed in future. Thus reply filed by petitioner reflects that the deficiencies noted by Committee in respect of maintenance of record by petitioner was not deliberate or with oblique motive or intentional. The mistakes were occurred inadvertently. No criminal intent can be attributed to petitoner in committing such procedural mistakes or lacunae.

13. The communication made by respondent No. 2 vide letter/ order dt. 15.4.2015 reflects that, the Advisory Committee has considered the reply filed by the petitioner and then found that the petitioner has violated the provisions of Sections 5, 29 and Rule 9 of the said Act & Rules. Thus, if we consider the show-cause notice, reply filed by the petitioner and the order dt. 15.4.2015 then the Advisory Committee itself recorded that the violation of sections 5, 29and Rule 9 of the said Act & Rules committed on the part of petitioner for taking action against her. However, the complaint filed by respondent No. 2 alleges breach of Sections 4, 5, 6, 29 and Rules 9, 10(1-A) and 18 of the said Act & Rules. Therefore, the complaint filed alleging offence under Sections 4, 6 of PCPNDT Act and violation of Rule 10(1-A) and 18 itself contrary to the decision of the Advisory Committee taken in its meeting dt. 01.04.2015.

14. If we consider the discrepancies as noted above, then it is nowhere the case of respondent No. 2 that, the petitioner has not maintained the record as mandatorily required under the provisions of the said Act & Rules thereunder. What has been alleged is certain

omissions, mistakes or lacunae on the part of petitioner in maintaining the record as envisaged under the provisions of the said Act & Rules. The discrepancies as noted are mainly refers to omission to mention full address, mobile number etc. of patients underwent sonography. If we consider the over all discrepancies noted by the Vigilance Committee, then same cannot be termed as act committed with intention to violate the provisions of the said Act & Rules made thereunder. In fact, there are no allegations against the petitioner that the discrepancies noted were made with ulterior motive or with a view to suppress certain information about patients or to misuse the ultrasonography machine for determination of sex of foetus. The PCPNDT Act has been enacted with an object to prohibit the mis-use of Pre-natal Diagnostic Techniques for determination of sex of foetus, leading to female foeticide, prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of the sex, permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders, permitting the use of such techniques only under certain conditions by the registered institutions and to provide for stringent punishment for violation of the provisions of the proposed legislation. In order to regulate the working of the genetic counseling centre, laboratory, ultrasound centre, the detail procedure has been provided for maintenance of the record, inspection of record and penal consequences for violating such regulatory mechanism by the genetic centre laboratory, sonography centre, imagining centre for determination of sex of foetus leading to female foeticide and creating imbalance in the male and female child. The provisions of Sections 4, 5, 6, and 29 are primarily lay down obligation on the part of the persons permitted to run such centers, laboratory, sonography machine, imagining machine, etc. to obtain the licence and to conduct their activities strictly in accordance with the conditions of the licence and statutory provisions of PCPNDT Act & Rules framed thereunder. The discrepancies of a nature as referred above cannot be treated as an act made with an intention to violate the provisions of PCPNDT Act and particularly sections 4, 5, 6, 29 and Rules 9, 10(1-A) and 18 of the said Act & Rules.

15. The petitioner has started ultrasonography centre in the year 2013. It is nowhere the case of the respondent No.2 that she has not maintained the record. The allegations made against the petitioner that, certain information which was to be recorded in the

particular manner has not been recorded. The omissions of a nature not to mention the mobile number of the patient, full address of the patient with mobile number, difference in signature of the Doctor & other inadvertent mistakes cannot be termed as a discrepancy or act of inaccuracy amounting to violation of the Sections 4, 5 or 6 or 29 of the PCPNDT Act. The petitioner has offered satisfactory explanation to each & every deficiency in Inspection Report.

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, non-bailable 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. Section 17(4) of the said Act lays down the functions of the Appropriate Authority which reads as under:-

S. 17(4) The Appropriate Authority shall have the following functions, namely :

(a) to grant, suspend or cancel registration of a Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic;

(b) to enforce standards prescribed for the Genetic Counselilng 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 bought 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 CSB and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

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

Section 17(a) lays down the powers of Appropriate Authority which reads as under:-

17-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 :

17. Thus, if we read the provisions of sections 17, 17-A 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.

18. 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. However, in the instant case, it appears that Appropriate Authority has failed to discharge its statutory obligations as contemplated u/s 17(4) of PCPNDT Act i.e. to

investigate the report of inspection received from Vigilance Squad which restricts to noting of certain lacunae, omission and certain mistakes in maintenance of record. The report of inspection itself could not be the basis to arrive at the conclusion that such lacunae, omission and mistake were deliberate and acts of omission and commission committed on the part of the petitioner with an intention to violate the provisions of PCPNDT Act. It was also expected on the part of Appropriate Authority to look into explanation given by the petitioner vide reply dt. 09.03.2015 and opportunity of personal hearing and then to arrive at just decision. The communication dt. 15.04.2015 which, in fact is an order communicated to the petitioner as to suspension of sonography centre finds no reasons for taking such action. 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 Vs. 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."

It appears that in the instant case what has been observed as above, not followed. The case has been instituted solely on the basis of report of the Vigilance Committee without investigating the matter and collecting the requisite material to prosecute the petitioner. The Appropriate Authority has failed to discharge its obligation as contemplated u/s 17(4) of PCPNDT Act before lodging the complaint

against the petitioner. It is not out of place to observe that sometime such casual approach of the Authority to invariably file complaints without proper inquiry, investigation & due application of mind leads to unnecessary criticism of the provisions of PCPNDT Act & Rules framed thereunder by the persons from the field of Medical profession. It is expected that the legal action must follow based upon sufficient material to establish that there was a violation of provisions of PCPNDT Act and Rules thereunder. Inadvertent mistakes committed during the course of maintaining record, lacunae and omission in filling up certain information in detail in the requisite forms needs to be considered in a proper perspective. Only after holding inquiry, if it is found that such lapses have been committed with any intent or motive to misuse the techniques and such professioner indulges into acts prohibited under the law, then stringent provisions of such act must be invoked and Appropriate Authority shall ensure that such persons are punished. Mistakes committed without any criminal intent and merely in the nature of procedural lapses needs to be properly understood before taking drastic action of initiating criminal prosecution against a person in the field of Medical profession. In an appropriate case, if the authority is satisfied that the mistakes were inadvertent and there was no criminal intent behind such procedural mistakes then such person be asked to rectify the mistakes and if necessary, such person be appropriately given understanding not to commit such procedural lapse. If there is persistent defaults and lapses on the part of such person, then recourse to stringent provision to prosecute such person may be taken. If such precautions are taken before lodging the prosecution against a person in the field of Medical profession, it would help to remove the fear in the mind of medical profession doing their work with utmost honesty, sincerity and due observance of medical ethics and code of conduct laid down under the PCPNDT Act being subjected to face unnecessary humiliation, harassment and criminal prosecution.

19. In this view, we proceed to examine as to whether the complaint discloses the commission of offence u/s 5, 29 and Rule 9 of the PCPNDT Act. Section 5 provides that, the written consent of the pregnant woman to be obtained before conducting the pre-natal diagnostic procedure as well as the manner in which the consent to be obtained. Section 5(1)(a) provides that, person conducting pre-natal diagnostic techniques shall not conduct the said procedure unless

such pregnant woman explained of known side and after effects of such procedure. In the case in hand, there are no such allegations against the petitioner nor there was any complaint to that effect against the petitioner. Section 5(1)(b) provides that, the person conducting the pre-natal diagnostic technique shall not conduct the procedure unless he has obtained the consent of such woman to undergo such procedure in the language which she understands and copy of her written consent is given to such woman. In the case in hand, there are no allegations that the written consent was not obtained before conducting the procedure. The allegations made against the petitioner confines to certain omissions in the consent forms filled in & obtain from such woman in which it was found that mobile number was not mentioned and in one case thumb impression was not attested. It is nowhere the case of the respondents that there were complaints against petitioner of conducting the procedure without obtaining the consent and not giving copy of the consent form to such woman. Though the petitioner was found to be following the prescribed procedure and obtaining the written consent but, proper care was not taken to fill in the complete information in the form such as full address, mobile number and attestation. It is also not the case that Appropriate Authority had investigated any complaint received or conducted inquiry on its own wherein the petitioner was found violating the provisions of Sections 5 and 29 & Rule 9 of the said Act & Rules. What has been observed by the Vigilance Committee that, some information which was required to have been mentioned in detail in respect of the patient has not been recorded. In this view the contravention of Rule 5 of the said Rules is not attracted on the face of the allegations made in complaint filed against the petitioner. On the contrary it transpires from report of Vigilance Squad that, the petitioner was following the procedure to obtain the consent in a prescribed proforma of the pregnant woman undergoing diagnostic techniques. Therefore, the violation of Section 5 of the said Act cannot be inferred on the face of the allegations made in the complaint. Similarly the allegations made in the complaint nowhere discloses the commission of offence u/s 6 of said Act to the effect that the petitioner has conducted any pre-natal diagnostic procedure for determining the sex of the foetus before or after conception & violated the provision.

20. Section 29 of the PCPNDT Act provides that the record as required to be maintained or to be preserved for two years or such

period and such record is to be made available for such inspection at all reasonable times, for the inspection of the Appropriate Authority or person authorized by the Appropriate Authority. The allegations made in the complaint nowhere discloses that the petitioner was found to be acted in violation of Section 29 and destroyed the record before the period prescribed under the said provisions. As discussed, the allegations as made against the petitioner are that, certain mistakes found in maintenance of record for which the petitioner has given detailed explanation. Therefore, on the face of the allegations made in the complaint the violation of Section 29 of the said Act is not attracted.

21. So far as Rule 9 of said Rules is concerned, it provides that before conducting pre-natal diagnostic techniques/test/procedure, the written consent as specified in the Form and in a language known to person undergoing such procedure shall be obtained from such person. As discussed, the Committee has found that though the petitioner was found to following the procedure to obtain the consent of woman in the prescribed proforma but certain information found to be not recorded. What has been observed by the Committee that while filling up the Form G certain information such as complete address, mobile number was not recorded. Not obtaining consent in prescribed proforma invites violation of Section 5 as well as Rule 9 of the said Act & Rules. However, unintentional & inadvertent mistakes in not recording certain details as discussed above itself not amounts to violation of Section 5 r/w Rule 9 of the said Act & Rules framed thereunder.

22. In the light of discussion made herein above, we are of the view the prosecution initiated against the petitioner is not sustainable in law and the complaint filed against the petitioner is liable to be quashed as the allegations made in the complaint together with documents filed therein taken at its face value and accepted in their entirety do not constitute any offence as alleged. The allegations made are so absurd that no prudent person can ever reach to conclusion that there are sufficient grounds to proceed against the petitioner. We are, therefore, inclined to invoke powers u/s 482 of the Code of Criminal Procedure to quash the complaint filed against the petitioner.

23. In view of the conclusions to which we have arrived at, that complaint is liable to be quashed, it is not necessary to deal with the other objection raised that the complainant is not competent & notified under Section 17 of PCPNDT Act as Appropriate Authority to file the complaint.

24. In the result, the petition is allowed in terms of prayer clause 'C' & 'D' of the petition.

25. Rule made absolute in aforesaid terms.

Result:- Petition allowed.

ABC 2016 (II) 624 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(A.I.S. Cheema, J.)
Criminal Appeal No.868 of 2015
Decided on 20 September, 2016
Aurangabad Bench

MOHAMMAD HANIF ISMAIL KHAN AJMERI - Appellants(s).

Versus

STATE OF MAHARASHTRA & ANR. - Respondent(s).

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 307 r/w 34 — Conviction under — Recovery of weapon — doubtful — Description of the culprits —not given in FIR or subsequently —Poor visibility —incident occurred in dark —Sudden occurrence — Held, If the incident had suddenly occurred, there would be hardly sufficient time to see the assailants properly when it was dark in the area —No specific role attributed — Registration of FIR —Held, the manner in which the F.I.R. was recorded is also not clear — Indian Evidence Act, 1872 — Section 3 — Relevant fact. (Para 10, 11, 12, 13 & 14)***

(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Specific attribution — lack of — the witness referred to the accused persons as the diesel thieves and the assailant— but did not try to say which of them had stabbed—Fatal to prosecution. (Para 9)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Specific attribution — lack of — Poor visibility — contradiction between the evidence of eye-witnesses — fatal to prosecution. (Para 9)

(D) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Apprehending the accused — contradictory statement of the witnesses — fatal to prosecution. (Para 10)

(E) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Complainant — Conduct of — Caught the accused persons himself