

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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2023:PHHC:136870

CRM-M-46808-2018

Date of decision: October 19th, 2023

Virender Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ramesh Hooda, Advocate
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, Deputy Advocate General,
Haryana.

MANJARI NEHRU KAUL, J.

The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of FIR No.60 dated 04.02.2016 under Sections 3, 4 of The Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act').

2. Before proceeding further, it would be apposite to reproduce the contents of the FIR, which has been annexed as Annexure P-1:-

“To, SHO Jhajjar, Sub. MTP Act Sub.: For registration of the FIR against sh. Varinder Singh, Prop. Dhankhar Nursing Home, Near Bus Stand Jhajjar under MTP Act. Today, on 04.02.2016 at about 12:30PM, on the written order of Civil Surgeon Jhajjar, a team consisting Dr. Ishwar Singh, Civil Surgeon Jhajjar, Dr. Rakesh, Deputy Civil Surgeon Jhajjar, Dr. Raj Karan, Deputy Civil Surgeon Jhajjar. Dr. Vaneet, Deputy Civil Surgeon NHM, Dr. Ruchika (LMO), Dr. M. Kamal, District Ayurvedic Officer and Vijay Raje, District Drug Controller Officer of Health Department went to the abovementioned Dhankhar Nursing Home, near bus

stand Jhajjar to enquire for conducting illegal MTP. During enquiry, the team got certain instruments and MTP Tablets which are used for abortion MTP, the list is enclosed at page no. 1 & 2. The above mentioned medicine and instruments were sealed after wrapping in a white cloth and the seal is stamp VRR and one sample seal was also prepared. Thus, the above mentioned doctor was involved in conducting the abortion and therefore, the case may be registered under Section 3 & 4 of MTP Act, 1971 against the doctor and further action be taken. Encls. List is at page no. 1 & 2 seizure duly sealed & signed by team members, Rakesh DY C.S. Jhajjar. Police Proceedings:- Today I ASI was present alongwith C Ravinder 743, on the Shikara Chowk in relation to patrol duty then Rakesh, Dy. Civil Surgeon Jhajjar met me and gave an application alongwith the sealed sample having the instruments and tablets. Perusal of the complaint, made out an offence U/S 3 - 4 MTP Act, 1971 thereafter, the writing is sent to the police station for registration of the FIR through C Ravinder 743 who will inform the FIR number after registration of the same. I ASI, am going to the spot of occurrence Dhankhar Hospital alongwith Dr. Rakesh, Dy. Civil Surgeon. At Chichara Chowk Jhajjar. Sd/- Pankaj Kumar ASI PP City Jhajjar dated 04.02.2016.”

3. Learned counsel for the petitioner has, *inter alia*, contended that he is a qualified GAMS doctor; that during the raid, neither the petitioner was present nor any medical termination of pregnancy was being carried out in his Nursing Home. Furthermore, he was also permitted to carry out medical procedures including carrying out delivery of pregnant women. It has been further argued that, even as per the affidavit filed by the Civil Surgeon, Jhajjar, Misoprostol tablet

which was allegedly recovered from his Nursing home, is often used for treatment in maternity homes and for postpartum bleeding, during delivery. In support, learned counsel has drawn the attention of this Court to Annexure P-4. Learned counsel has still further submitted that even if the entire allegations levelled in the FIR were presumed to be true, no offence would still be made out against the petitioner as mere purchase of MTP kits, which were allegedly found in the Nursing home of the petitioner, would not be an offence under the Act. Learned counsel in support of his submissions has placed reliance upon *CRM-M No.32212 of 2011* titled as *Dr. Renu Bansal Versus State of Haryana*, *CRM-M No.15860 of 2014* titled as *Dr. Vandana Malik Versus State of Haryana*.

4. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has asserted that a raiding party comprising of the Civil Surgeon, Jhajjar and other senior officials and doctors recovered surgical instruments and MTP Kits from Dhankar Hospital, Jhajjar (being run by the petitioner), which were being used for illegal termination of pregnancy. She has further submitted that during the raid which was carried out by a team of doctors, the following instruments were recovered:-

Sr. No.	Name of Instruments/Medicine	Qty	Purpose
1.	Sims Speculum	1	Instrument to see the position of vagine and uterus
2.	Valsulum	1	Instrument to see the position of vagine and uterus
3.	Dialater/Catheter	1	For passing urine
4.	Sponge Holder	1	To clean the wound/injury
5.	Combipack of	2 tablets & 1	Mifepristone is used to

	Mifepristone & misoprostol	half tablet	increase pain in case of fetus death of unborn child & Misoprostol is used to stop excessive bleeding after delivery.
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5. It has further been submitted by the learned State counsel that since the petitioner was a ayurvedic doctor, he could not have used allopathic medicines much less prescribe them to his patients. Learned State counsel has vehemently asserted that in the light of the recoveries effected from the Nursing Home of the petitioner, it could be safely inferred that the petitioner had been conducting illegal termination of pregnancies, which as per the Act could have been done only by a Registered Medical Practitioner and that too in exceptional circumstances as provided in Section 3 of the Act. However, the petitioner did not fall into any of the categories under Sections 4 and 5 of the Act and thus, had violated the law.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. This Court has to merely ascertain whether from the allegations levelled in the FIR, *prima facie* the offence alleged is made out against the petitioner or not.

8. In the present case, the petitioner, who is a qualified GAMS doctor has been accused of having been found in possession of certain surgical instruments used for terminating pregnancies and also having been found in possession of a Medical Termination of Pregnancy Kit, during a raid conducted by a team of doctors at his Nursing Home. The State has alleged that petitioner had been conducting illegal terminations of pregnancies, however, the State has not disputed that during the raid in question, the petitioner was not present in his

Nursing Home nor any patients were admitted in his Nursing Home for termination of pregnancy nor were there any patients present, whose pregnancies had been illegally terminated, much less any statements of any of such patients were recorded. Furthermore, the State has also not been able to dispute that the surgical instruments recovered during the raid from the Nursing Home of the petitioner are commonly used for various medical procedures, including child birth. The seized instruments do not suggest that they are used exclusively for the termination of pregnancy; the seized surgical instruments are in fact commonly used in surgeries for various medical conditions and even in maternity homes for the purpose of delivery of pregnant women.

9. As far as the contention of the learned State counsel that petitioner could not have stored or prescribed allopathic medicines is concerned, it is undisputed that the petitioner is a GAMS doctor, authorized to conduct deliveries for pregnant women. Even as per the affidavit filed by the Principal Secretary to Government Haryana, Health Department, Chandigarh, which has been annexed as Annexure P-3, the petitioner was eligible to practice Indian System of Medicine and Modern Medicine including surgery, gynaecology and obstetrics based on the training and teaching, which are included in the syllabus. Furthermore, BAMS/GAMS doctors, as per notifications issued by the Central and Haryana Government, are permitted to perform normal delivery of pregnant women in Haryana. Therefore, the claim of the learned State counsel that the petitioner had illegally stored MTP kits and had been dispensing allopathic medicines lacks merit. It is crucial to emphasize that in a criminal case, an accused cannot be proceeded against or held guilty on the basis of assumptions and

presumptions. It has not been disputed by the State that there is no provision under the Act under which the petitioner could be penalized for possessing instruments used for termination of pregnancy. Consequently, even if the petitioner had kept MTP kits and surgical instruments in his Nursing Home, which was allegedly recovered during the raid in question, they would not constitute any offence, much less any offence for which the petitioner is being sought to be prosecuted under the Act.

10. The instant petition is, therefore, allowed. The aforesaid FIR and all consequential proceedings arising out of it, are quashed qua the petitioner.

October 19th, 2023

Puneet

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No