

*Trial Processes and Seizure and Release of Property
under PC & PNDT Act*



Presented by :

Dr. Mrs. Shalini S. Phansalkar – Joshi
Judge, High Court, Bombay

Kishan Lal Vs. State of Hariyana

[1982 SC 1252]

“One socially sensitized Judge is a far greater Armour against gender outrage than long clauses of section of the law containing all the protection therein.”

Court Trial and Procedural Issues

- Who can file a complaint under the Act ?
- Who can take cognisance under the Act ?
- Who can be an offender under the Act ?
- Why no role of police under the Act ?
- Provisions relating to bail.
- Procedures for conduct of trial.
- Nature of evidence.
- How to appreciate evidence.
- How to pass final order.
- Expeditious hearing of cases.

Who can file complaint ?

Answer : Section 28(1)

Whether Section 28 narrow down the class of persons, who can file complaint?

- Whether presence of Appropriate Authority before the Court is necessary at the time of filing complaint?
- Verification of Appropriate Authority is necessary?

- Whether Nodal Officer under the Act can file a complaint ?
- Whether subsequent authorization can validate his locus ?

Dr. Preetinder Kaur Vs State of Punjab

[2011 Cri.L.J. 876]

- Scope of S.28 of the Act was discussed.
- Held that it does not narrow down the class of persons who can initiate action under the Act.
- Apart from Appropriate Authority, an officer authorised by Central or State Govt. can also file a complaint.
- Complainant can also be a person authorised by Appropriate Authority itself or even a social organisation.
- Broadens the scope of S.28, giving authority to wide class of persons to initiate action, it being a legislation to prevent social evil.

- Complaint can be made by any officer authorized by Appropriate Authority.
- Power to delegate is conferred on all the third parties.

Who can take cognizance
under the Act ?

Answer : Section 28(2)

Who can be “Offender” under the Act ?

Any person, who ;

- Uses PC & PND Techniques for the purpose of sex selection or sex determination;
- Any person seeking or encouraging the conduct of any sex selection techniques.
- Section 22 – Advertising.

Who can be “Offender” under the Act ?

- The owner of Genetic Counselling Centre, Genetic Laboratories, Genetic Clinics, any person employed therein and rendering their professional or technical services; whether on honorary basis or otherwise;
- Any Medical Genetics, Gynaecologist or registered Medical Practitioner, who contravenes any of the provisions of the Act or Rules.
- Any per person, who contravenes the provisions of the Act.

Satya Trilok Kesari @ Satyanarayan
s/o. Trilokchand Lohia

Vs.

State of Maharashtra and Anr.
[2012 (6) LJSOFT 389]

- Article in legal newspaper on how to conceive a male child through naturopathy.
- Case filed under Section 22 of PCPNDT Act against the Applicant.
- Application filed in HC for quashing proceedings.
- Argument that it was a research paper.
- Argument was rejected holding that intention of the Applicant has to be read between the lines.
- Some paras very explicit and held it amount to violation of Section 22(1) of the Act.

Dr. Vandana Ramchandra Patil

Vs.

The State of Maharashtra and Anr.

Cr. Writ Petition No.4399 of 2012

Decided on January 23, 2013.

- Pending criminal trial, sonography machine was sealed and licence suspended. Trial Court allowed opening of the seal so that sonography machine can be used. Order challenged in the HC.
- Held crime is repetitive in nature. Sonography machine is most important component. If the seal is opened, accused is facilitated to repeat the offence. Prevention of crime best achieved by sealing machine. Repetition of such crime has to be prevented.
- Held order of opening of seal and release of machine cannot be made mechanically.
- Court must consider the effect and impact of such order.

Whether “Pregnant Woman” can
be an 'offender' ?

Answer : Section 24

“Pregnant Woman” cannot be an offender, unless the contrary is proved.

- Presumption in favour of “Pregnant Woman” that she was compelled by her husband or other relatives to undergo the PC & PND Techniques;
- Husband or other relatives are, therefore, liable for abatement of such offences.

Presumptions available under PC & PNDT Act

Section 4(3)

“Any deficiency or inaccuracy found in maintenance of record shall amount to contravention of the provisions of Section 5 or 6, unless the person conducting sonography proves the contrary.”

Suo Moto Vs Sate of Gujarat

[2009 Cri. L.J. 721 (F.B.)]

- Gives progressive interpretation to S.4(3) of the Act holding that by virtue of deeming provision of the proviso to said section contravention of the provisions of S.5 or 6 is legally to be presumed. Hence, there need not be allegation in the complaint about the inaccuracy or deficiency in maintaining record as resulting in contravention of S. 5 or 6 of the Act.
- Burden to prove the contravention of this provision does not lie on the prosecution.
- Deficiency or inaccuracy in filling Form -F under Rule 9 is not merely a procedural lapse but an independent offence.

Dr. Sujit Govind Dange v. State of Maharashtra

[2012 (10) L.J. Soft 22]

- *The issues raised for consideration were,*
- ✓ whether opportunity to show cause or of being heard was required to be given to the Petitioner before seizure of Sonography Machine ?
- ✓ Whether approval of Advisory Committee was necessary before seizure of Sonography Machine ?
- ✓ Whether suspension of Licence for indefinite period was in complete violation of Principles of Natural Justice and hence contrary to Sec.20 of the Act.

Dr. Sujit Govind Dange v. State of Maharashtra *[2012 (10) L.J. Soft 22]*

- Held :
- Considering the objectives of the Act to be achieved, in order to protect the larger public interest, the Appropriate Authority has been given exceptional powers under sub-section 3 of Sec.20 of the Act to suspend the registration of the Clinic and seize the Sonography Machine, without giving Show Cause Notice or an opportunity of hearing to the Accused.

Dr. Sujit Govind Dange v. State of Maharashtra

[2012 (10) L.J. Soft 22]

- It was further held that, the words “unless contrary is proved” used in proviso to Sec.4(3) of the Act requires that such presumption laid down in proviso to Sec.4(3) of the Act is to be rebutted at the time of trial and not at the stage when Sonography Machine is seized or registration is suspended. The burden will lie on the Accused to prove the contrary at the time of trial before the Criminal Court that there was no deficiency or inaccuracy in maintaining and preserving the complete record of the clinic.
- It also cannot be said that suspension of registration is for indefinite period because it is only upto the conclusion of criminal trial.

What is the nature of the offence under the Act ?

Answer : Section 27

“Offence - Cognizable, Non-Bailable and Non-Compoundable.”

Whether “Police” have any
role under the Act ?

**“No express provision
conferring role on Police.”**

Whether “Police” can carry
out investigation ?

“No Prohibitions”, **so far as “Investigation”**

- Police has every right to investigate any offence committed in violation of any of the provisions of the Act.
- Court, however, cannot take cognisance on the F.I.R. Or Charge-Sheet filed by Police.

Dr. Arvind Pal Gambhir Vs. State of Punjab
[2012 Ind Law 4424]

Dr. Varsha Gautam Vs. State of U.P.
[2006 (5) ALJ 221]

**What is prohibited is,
“taking cognisance”.**

Procedure in Trial

- Case instituted not on the Police Report, but otherwise;
- Punishment provided extending to three years;
- Hence, procedure to be adopted is “Warrant Trial”, as laid down in Chapter XIX of Cr.P.C., Part “B”, for cases instituted otherwise, than on Police Report.

Dr. Ravindra s/o Shivappa Karmudi

Vs.

State of Maharashtra

[2012 (10) LJSOFT 138]

- Procedure for conducting the trial u/s. 22 and 23 of the Act is that of warrant case registered on a complaint otherwise than on police report.
- Hence evidence before framing of charge has to be recorded.

What are the “Key Provisions” relating to Bail ?

Answer : Section 27

- Offence – Non-bailable.
- Declining sex ratio has grave implications on socio-culture fabric of the society.

Subhash Gupta Vs. State

[Bail Application No.1556 of 2010

Decided on September 27, 2010]

“Anticipatory Bail Application rejected having regard to the probity of the allegations and serious nature of the offence that of conducting sex detection and determination test.”

What is the nature of “Evidence”?

Oral as well as Documentary

- Oral testimony of pregnant woman, person accompanying her in the case of decoy, Panch, NGO Representative or any other person/s, who has/have conducted decoy operation;
- Appropriate Authority.
- Documentary evidence collected from the Clinic, Receipt, Form “F”, Consent Letter, Sonography Report, prescription, clip of audio, video recording, etc.

“Appreciation of Evidence”

- Object and Reason of the Act;
- Direct evidence may not be available;
- Has to decide the case on circumstantial evidence;
- No aggrieved person;
- Appreciation of evidence should be sensitive, realistic, bearing these constraints in mind and having regard to the presumptions laid down under the Act.

- Non-maintenance of record, not merely a technical, or, procedural lapses.
- Punishment has to be deterrent.

“HOW TO PASS FINAL ORDER”

- Does not make distinction in punishment for conducting sex selection, disclosure of sex of foetus, non-maintenance of record and/or advertisement.
- Graded punishment of imprisonment and fine for first and subsequent offences.

EXPEDITIOUS DISPOSAL OF CASE

S.K. Gupta Vs Union of India

[Law (Raj) 2012 (5) 72]

Voluntary Health Association of Punjab

Vs.

Union of India and Others

[AIR 2013 SC 1571]

Dr. Mrs. Suhasini Umesh Karanjakar

Vs.

Kolhapur Municipal Corp.

[2011(4) AIR Bom. R 326 (F.B)]

S.K. Gupta Vs Union of India

[Law (Raj) 2012 (5) 72]

- In this P.I.L., a Division Bench upheld the decision taken by the State Government of filing of Form “F” online on the Government Website “hamaribeti.nic.in”.
- Directions for effective compliance within the time prescribed.
- Violation of the direction would amount to violation of the HC order under Article 215 of Constitution of India as well as under the Contempt of Courts Act.

- Further direction for expeditious hearing of the cases.
- To frame charge in the pending cases within two months, even by preponing the date.
- No laxity to be tolerated if Trial Court delayed framing of charge.
- Directions to Sessions Court to decide Revision against framing of charge within three months.
- Cases pending before HC for quashing and framing of charges to be listed on priority basis.

- Government to take action against erring Doctors/Centres.
- Investigation in pending cases to be completed as expeditiously as possible.
- List of the cases in which Charge-Sheet is filed to be submitted to the HC.
- Copy of the order sent to all C.J.J.D. and Sessions Judges, Registrar General, Chief Secretary, Director General of Police and Principal Secretary.

Voluntary Health Association of Punjab

Vs.

Union of India and Others

[AIR 2013 SC 1571]

Various directions issued in this PIL to Central and State Supervisory Boards and Advisory Committees viz. to maintain all the records and forms in accordance with Rule 9. Mapping of registered and unregistered clinics within three months, Special Cell to monitor progress of various cases pending in the Court and to take steps for their early disposal.

- To seize, confiscate and sell Sonography Machines used illegally and contrary to the provisions of the Act.
- Courts to take steps to dispose of all pending cases within six months.
- To take steps to educate people on the necessity of implementing provisions of the Act.
- To conduct workshops and awareness camp focusing on the empowerment of women.
- To realize ultimate aim of having gender equality.

Dr. Mrs. Suhasini Umesh Karanjakar

Vs.

Kolhapur Municipal Corporation

[2011(4)AIR BomR 326 (F.B)]

- Held that, words “any other material object” used in S. 30 of the Act and Explanation (2) to Rule 12 clearly provide that Appropriate Authority is empowered to seize and seal ultra-sound machines, other machines and equipments capable of aiding or assisting in sex-selection. (Earlier contrary view reversed).
- Considering declining sex-ratio in Maharashtra from 913 in 2001 to 883 in 2011, the directions were given for expedite disposal of the pending cases under the Act with utmost priority, preferably within one year.

After Charge :-

Copy to be sent to Medical Council for cancellation of registration.

After Conviction :-

Copy to be sent to Medical Council for cancellation of registration.

In the Judgment, final
order for confiscation of
Sonography Machine.

Kishan Lal Vs. State of Hariyana

[1982 SC 1252]

“One socially sensitized Judge is a far greater Armour against gender outrage than long clauses of section of the law containing all the protection therein.”

Kundulubala Subramanyam

Vs.

State of Andhra Pradesh

[(1993) 2 SCC 684]

“If the laws are not enough to combat this social evil, the role of Courts assumes greater importance and it is expected that the Courts should deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunae in the evidence.”

Jaikumar Vs. State of Madhya Pradesh *[(1999) 5 SCC 1]*

“Law Courts exists for society and ought to rise up to the occasion to do needful in the matter and as such ought to act in the matter so as to sub-serve the basic requirements of the society.”

Hardwara Bhoginbhai Hirjibhai

Vs.

State of Gujarat

[(1983) 3 SCC 1073]

“Human goodness has limits. Human depravity has none. However, the need of the hour is not exasperation or helplessness, but to evolve the law so as to make it more sensitive and responsive to the demands of time in order to resolve the basic problems.”

