

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY  
SUBORDINATE COURT) NO. 1354 of 2024**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS. JUSTICE GITA GOPI Sd/-**

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Approved for Reporting	Yes	No
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**CHAUDHARY BHAGUBHAI MANSANGBHAI**  
Versus  
**STATE OF GUJARAT & ANR.**

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**Appearance:**

MR HARSHADKUMAR D PANCHAL(9015) for the Applicant(s) No. 1  
NOTICE SERVED for the Respondent(s) No. 2  
MS JYOTI BHATT APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 06/04/2026**

**JUDGMENT**

1. Rule. Learned APP waives service of Rule on behalf of the respondent – State.

2. By way of this application under Section 397 read with Section 401 of the Criminal Procedure Code (for short, 'Cr.PC'), the applicant has, inter-alia, prayed for quashing and setting aside the impugned order dated 11.07.2024 passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Mehsana at

Visnagar.

3. As per the facts of the prosecution, an FIR bearing CR No.II-406 of 2012 was registered with Visnagar Police Station, District Mehsana by Pravinaben being a Sub Divisional Magistrate, Visnagar as *de-facto* complainant on 27.11.2012 for the alleged commission of offence punishable under Sections 3A, 3B, 4, 5, 6, 22, 23, 25 and 29 of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, 'PC&PNDT' Act).

3.1 It was alleged in the FIR that on the basis of the information received by the District Collector, sting operation was carried out and search at the place of the accused and after recording statements of some witnesses, complaint was filed. It was the allegation in the complaint that illegally, the applicant was conducting the sex determination of foetus, by examining through sonography.

3.2 The applicant was arrested and released on regular bail at that time. Further, the charge-sheet came to be filed in which Sections 313, 315 and Section 114 of the Indian Penal Code (for short, 'I.P.C') were also added.

4. The application under Section 227 of the Cr.PC was moved to discharge the applicant from the offence under Sections 313 and 315 of the I.P.C.

5. Learned Advocate Mr. Harshadkumar Panchal for the applicant referring to the provision of Section 28 of PC&PNDT

Act submitted that the invocation of section 313 and 315 along with Section 114 of IPC in the charge-sheet would be contrary to the provision of PC&PNDT Act. Advocate Mr. Panchal submitted that as provided under Section 28 of the PC&PNDT Act, there could be no FIR in the police station and that it is only the Court which can take cognizance of the offence under the PC&PNDT Act on the complaint made by the appropriate authority concerned or any officer authorized in this behalf by the Central Government or the State Government or the appropriate authority. Hence, advocate Mr. Panchal submitted that the challenge had been given to the complaint filed under Section 154 of the Cr.PC by the Sub-Divisional Magistrate, Visnagar.

5.1 Learned Advocate Mr. Panchal stated that the very registration of the FIR against the applicant should be considered to be bad in law and therefore, the petitioner had preferred quashing petition being Cr.MA No.1918 of 2013 before this High Court where initially, the stay was granted and thereafter along with other petitions, the petition preferred by the revisionist also came to be dismissed by this Court. Thereafter, the revisionist had approached the Hon'ble Supreme Court.

5.2 Learned Advocate Mr. Panchal thus submitted that in view of the dismissal of the quashing petition, the discharge application Exh.58 was moved with a limited purpose of discharging the applicant for the offence under Sections 313,

315 and 114 of the IPC. Advocate Mr. Panchal submitted that the application of the petitioner came to be rejected on 11.07.2024 by the Additional Sessions Court and the revisionist thus being aggrieved has come before this Court in the revision jurisdiction under Section 397 read with Section 401 of the Cr.PC.

5.3 Learned Advocate Mr. Panchal for the revisionist submitted that the impugned order is ex-facie illegal, unjust and against the provision of the statutes. The order is patently erroneous, palpably wrong and demonstrably illegal. The learned trial Court Judge has committed serious error while appreciating the facts of the case, which had led to miscarriage of justice.

5.3.1 Learned Advocate Mr. Panchal raised apprehension that pending criminal proceeding, the registration of the hospital/centre would be cancelled or suspended effecting the livelihood of applicant.

5.4 Learned Advocate Mr. Harshadkumar Panchal contended that the learned Judge has not appreciated the ingredients of Section 313 and 315 of the IPC where no single material on record or the proof relied upon by the prosecution connects the applicant with the offence. Advocate Mr. Panchal submitted that it was a decoy trap and thus, there could not be any case of causing miscarriage without the woman's consent as provided under Section 313 nor would be a case of any act done with an intent to prevent child being born alive or to

cause it to die after birth as provided under Section 313 and 315 of the IPC. Advocate Mr. Panchal further stated that the statement of the witnesses recorded by the police as provided under the charge-sheet does not make the case as alleged by the prosecution, thus, made a prayer to set aside the order of the learned Additional Sessions Judge below Exh.58 and to discharge the applicant from Sessions Case No.11 of 2015 allowing the application Exh.58.

6. Per contra, learned APP Ms. Jyoti Bhatt submitted that it is not only the case of decoy trap but a complaint by the learned Sub-Divisional Magistrate before the police on 27.11.2012 to make further investigation in connection with the complaint given by her, where the trap disclosed the offence under the PC&PNDT Act. Further, it was noticed that the accused doctor was not maintaining the record in the hospital as mandated by the PC&PNDT Act and therefore, it was necessary to make further investigation to dig in and find out whether any case was found of causing miscarriage, and any criminal act of the applicant. APP Ms. Bhatt submitted that the police in the investigation by recording the statements of the witnesses and the victim could find that the accused had committed the offence of causing miscarriage without the woman's consent and that the accused as a doctor was found to be indulged in the acts of preventing the child from being born alive and such acts were not in a good faith for the purpose of saving the life of the mother, but was only after the sex determination of the foetus, the foetus were removed so

that no girl child would be born.

7. The main crux of the argument from the side of learned Advocate Mr. Panchal was that the Sub-Divisional Magistrate had no authority to file any complaint before the police in view of Section 28 of the PC&PNDT Act, whether the authority would only have the power to make a complaint under PC&PNDT Act and not IPC and further under Section 28 of the PC&PNDT Act, the Court would only take cognizance of the offence under the PC&PNDT Act on the complaint made by the appropriate authority concerned. Thus, it was argument of learned Advocate Mr. Panchal that there could not be any invocation of the provision of the Sections of the IPC.

7.1 Section 28 of the PC&PNDT Act reads as under:

“(1) No Court shall take cognizance of an offence under this Act except on a complaint made by -

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than [fifteen days] in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the Court.

(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.”

8. It is submitted before the Bar that the private complaint has already been filed by the present *de-facto* complainant before the concerned Court. The police machinery was moved on the complaint dated 27.11.2012 by the Pravinaben D.K.S.D.M. Visnagar informing the police of the commission of the offence punishable under Sections 3A, 3B, 4, 5, 6, 22, 23, 25 and 29 of the PC&PNDT Act, where the FIR bearing II 406 of 2012 was registered with Visnagar Police Station, District Mehsana.

8.1 The *de-facto* complainant informed the police that the sting operation was carried out and the search was made at Sharda Maternity and Surgical Nursing Home in VM Complex, where accused no.1 i.e. present revisionist was serving as Gynecologist doctor and where accused was determining the sex of the foetus for examination to know whether it was male or a female by way of sonography and the information being received by the complainant, a sting operation was conducted on 27.11.2012. The decoy witness statement was recorded before learned Executive Magistrate, Visnagar and she was

handed over Rs.10,000/-, the denomination of the notes were recorded and was sent to the hospital, where accused no.2 had accepted Rs.200/- for the registration of the case, while accused no.1 with assistance of accused no.3 had examined the foetus of the decoy woman witness and had accepted the money from her and during that period, at about 15:45 hours, the complainant along with the witnesses, had raided the hospital and at that time, from the possession of accused no.1, the currency notes which were handed over in total of Rs.9,500/- were recovered, and along with other amount of Rs.1,39,230/-.

9. The law as has been laid down explains the definition of embryo and foetus in Section 2(bb), (bc) reproduced herein-under :

(bb) "embryo" means a developing human organism after fertilisation till the end of eight weeks (fifty-six days);

(bc) "foetus" means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth;

10. Chapter (III) regulates Prenatal Diagnostic Techniques. Section 4 is provided for the regulation of Prenatal Diagnostic Techniques and Section 5 is with regard to the written consent

of pregnant woman and prohibition of communicating the sex of foetus. Both the sections are reproduced herein-below for ready reference:

***"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 of 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 Central Supervisory 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 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.*

***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.]*

11. Section 27 has made offence under the PC&PNDT Act cognizable, non-bailable and non-compoundable. Reference of Section 24 of the PC&PNDT Act, would be very much necessary wherein the act provides for the presumption in case of conduct of prenatal diagnostic techniques, where the Court despite anything provided in the Indian Evidence Act presumes that the pregnant woman was compelled by her husband or other relatives as the case may be to undergo prenatal diagnostic techniques, unless contrary is proved, for the purposes other than those specified in Sub-section (2) of Section 4 and those persons, i.e. the husband and relatives would be made liable for the offences under Sub-section (3) of Section 23 as an abettor.

12. In the case of **Suo Motu v. State of Gujarat**, reported in **2008 SCC On-Line Guj 294**, the three Judges bench of this Hon'ble Court answered the issues raised by learned single Judge in the References. The issues raised has been reproduced herein-below:

- “(i) Whether under the provisions of section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in this behalf by the Appropriate Authority?
- (ii) Whether the provisions of the proviso to sub-section (3) of section 4 of the PNDT Act require that the complaint should contain specific allegations regarding the contravention of the provisions of sections 5 and 6 of the Act?
- (iii) Whether the burden lies on the authority to prove that

there was contravention of the provisions of section 5 or 6 of the PNDT Act?

- (iv) Whether any deficiency of inaccuracy in filing Form-F as required under the statutory provisions is merely a procedural lapse?"

12.1 After considering the issues, it had been answered in Para 19 as under:

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

- (i) Under the provisions of section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("the PNDT Act"), a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in that behalf by the Appropriate Authority.
- (ii) The proviso to sub-section (3) of section 4 of the PNDT Act does not require that the complaint alleging inaccuracy or deficiency in maintaining record in the prescribed manner should also contain allegation of contravention of the provisions of section 5 or 6 of the PNDT Act.
- (iii) In a case based upon allegation of deficiency or inaccuracy in maintenance of record in the prescribed manner as required under sub-section (3) of section 4 of the PNDT Act, the burden to prove that there was contravention of the provisions of section 5 or 6 does not lie upon the prosecution.
- (iv) Deficiency or inaccuracy in filling Form F prescribed under Rule 9 of the Rules made under the PNDT Act, being a deficiency or inaccuracy in keeping record in the prescribed manner, it is not a procedural lapse but an independent offence amounting to contravention of the provisions of section 5 or 6 of the PNDT Act and has to be treated and tried accordingly. It does not, however, mean that each inaccuracy or deficiency in maintaining the requisite record may be as serious as violation of

the provisions of section 5 or 6 of the Act and the Court would be justified, while imposing punishment upon conviction, in taking a lenient view in cases of only technical, formal or insignificant lapses in filling up the forms. For example, not maintaining the record of conducting ultrasonography on a pregnant woman at all or filling up incorrect particulars may be taken in all seriousness as if the provisions of section 5 or 6 were violated, but incomplete details of the full name and address of the pregnant woman may be treated leniently if her identity and address were otherwise mentioned in a manner sufficient to identify and trace her.

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

13. In the present matter, the issue raised by learned Advocate Mr. Harshadkumar Panchal was regarding the registration of the FIR where the learned Advocate submitted that under no circumstances, an FIR can be registered before the police under the PC&PNDT Act and the Police would have no authority to file the charge-sheet under the IPC. The record discloses the fact that the complaint was given by Sub-Divisional Magistrate on 27.11.2012 before the police on the basis of the decoy trap and and the *de-facto* complainant has made a prayer to investigate and to take legal steps against Bhagubhai Chaudhary. The allegation was also made of not maintaining the record and details to identify the victims and to trace them. The police had investigated the matter and had recorded the statements of the witnesses and having found the case under Sections 3A, 3B, 4, 5, 6, 22, 23, 25 and 29 of the PC&PNDT Act as well as Section 313 and 315 read with

114 of the IPC, had filed the charge-sheet against the accused.

14. In Rule 18A (3) (iv) of the PC&PNDT Act, it is laid down as under:

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

14.1 The provision under the referred rule does not prohibit or bar the involvement of police for investigating the case under the PC&PNDT Act.

15. The charge sheet was filed on the ground that the pregnant patients present in the hospital, their sonography was conducted to know the sex of the foetus for the sex selection, without any consent of the woman. Further, no names were recorded in the registers and (F) form were not maintained and from the personal diary of the accused, it was found that accused no.1 with the accused shown in column no.2 of the charge-sheet without any consent, were examining the foetus by sonography, by taking huge amount as fee, and the foetus of female were terminated in abetment by the accused.

15.1 After the complaint came to be filed, the police inquired into the matter and recorded the statement of Niranjambhai Babubhai Barot, Rajeshkumar Jaswantbhai Dagbar, Pratikkumar Rajubhai Chavda, Parulben d/o of Prabhudas Chaturdas Patel, Chetankumar Mafatlal Patel, Vishnubhai

Ambalal Patel on 03.12.2012.

15.2 While statement of Ashwinbhai Bhimja Sawaliya (Patel), Gauriben w/o Ashwinbhai Bhimja Sawaliya (Patel), Dhirenbhai Maganbhai Radadiya (Patel), Kajalben w/o Dhirenbhai Maganbhai Radadiya (Patel), Shobhnaben w/o Sureshbhai Ishwarbhai Chaturdas (Patel), Sureshbhai Ishwarbhai Chaturdas (Patel), Jyotiben Ishwarbhai Chaturdas (Patel) were recorded on 05.12.2012 and on 06.12.2012, statement of Kailashben w/o of Nanjibhai Hansaji Prajapati was recorded. The statements recorded on 05.12.2012 and 06.12.2012 became relevant for the charge-sheet which has been filed against the accused present revisionist.

15.3 In the statement of witness Ashwinbhai Bhimja Sawaliya (Patel), he has stated that on 27.11.2012, as wife suffered sudden bleeding in her two months pregnancy, they had visited the Sharda Maternity Hospital and had met the doctor and after the sonography, the foetus was examined and the witness was informed that the sex of the foetus was of female and the doctor asked him to get it aborted and before they could understand, the fee of Rs.3,000/- was recovered from him in six currency notes in the denominations of Rs.500/- and Rs.300/- as consultation fee. The witness has stated that no written or oral consent was taken of his wife nor any signature was taken on any paper or form. He has referred to this act by the present revisionist with his son Dr. Hardik and one nurse. The wife of Ashwinbhai i.e. Gauriben's statement was also recorded who has reiterated the same fact stating that no

written or oral consent was taken for the termination of pregnancy.

15.4 Dhirenbhai Maganbhai Radadiya (Patel) has also given the similar facts against the accused and that the abortion was directed on pre-natal determination of the sex of foetus leading to female foeticide. The statement of Kajalben w/o Dhirenbhai reaffirms the same fact. Even Shobhnaben w/o Sureshbhai, who had come with the complaint of stomach pain having one and half month pregnancy on sex determination by way of sonography, she stated that before she could understand, without any written or oral consent from her or her husband and without filling up any form, the female foetus was aborted.

15.5 Sureshbhai Patel had also visited the Sharda Maternity Nursing home on 27.11.2012, he had come with his wife who was carrying one and half month pregnancy with a complaint of stomach pain. He has also stated about the foetus examination and the fact of no oral or written consent given by him or his wife, who further stated that prior to the raid, the abortion was conducted and therefore, doctor had asked them to leave the hospital secretly.

15.6 Jyotiben, the widow of Ishwarbhai Chaturdas, had gone on 27.11.2012 along with her son and daughter-in-law, who had the complaint of pain in the stomach and according to her statement, without their consent in writing or in oral or without the consent of the daughter-in-law, the abortion took

place. Even Kailashben w/o Nanjibhai, who was carrying four months pregnancy, had visited the hospital on 27.11.2012 along with her husband and had met Dr. Bhagubhai Chaudary the present revisionist, and after sonography, the doctor had informed that it was a girl child, not properly developed and therefore, the four months foetus was removed.

16. Section 28 of PC&PNDT Act approves of the cognizance of the offence by the Court under the PC&PNDT Act only on the complaint made by the appropriate authority. The police had found the case under Section 313 and 315 of IPC read with Section 114 during the investigation, the police had found the offence as provided under the IPC. The maintainability of the FIR invoking the section of IPC along with the sections of PC&PNDT Act could be well-explained by the analogous comparison of the provisions of the Mines and Minerals (Development and Regulation Act, 1957), where the Hon'ble Supreme Court had the opportunity to deal with it with similar type of aspect of registration of the complaint before the police.

17. In the case of *Jayant and others vs. State of Madhya Pradesh, (2021) 2 SCC 670*, it was observed with respect to the provision of Section 22 which approves for the cognizance of the offence under Mines and Minerals (Development and Regulation) (for short, 'MMDR' Act), 1957 only upon complaint in writing by the person authorized on behalf of the Central Government or the State Government, where in too, FIR filed

under sections of IPC was put to question.

17.1 Section 22 of the MMDR Act would be relevant to refer for aborting the analysis. Thus, Section 22 is reproduced herein-under:

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

18. In the case of *Jayant (supra)* it was further held as under:

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

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

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

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

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

due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and the Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

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

18.1 As noted under para 21.3 of the judgment referred of Jayant (supra) for the commission of offence under IPC, the Magistrate having jurisdiction can take the cognizance of the said offence without awaiting for the complaint of the authorised person under the MMDR Act.

19. Section 24 of the PC&PNDT Act draws presumption against the husband and relatives and it would be considered that the husband or any other relative as the case may be, had compelled the pregnant woman to undergo prenatal diagnostic techniques for the purposes other than those specified in sub-section (2) of Section 4 and such person

would be liable for the abetment of offence under sub-section (3) of Section 23. The Court concerned can verify the facts of the case on the private complaint filed under PC&PNDT Act, but, here in this case, the matter was lodged on the basis of decoy trap where there would not be any case of drawing presumption under Section 24 of the PC&PNDT Act for the decoy witness, however, the I.O has, on the investigation by the private complaint, had recorded the statements of the other women who were there on that day and the husbands and the relatives concerned who had brought pregnant woman and the I.O had found that the pregnant women were subjected to miscarriage without their consent and therefore found the present revisionist liable for the offence under Section 313 and 315 of the IPC, where the doctor has been alleged of causing miscarriage without woman's consent with an intention to prevent the child from being born alive, without any good faith for the purpose of saving the life of the mother. The provision under Section 313 and 315 read with Section 114 of the IPC has been independently lodged by the I.O.

20. Here in this matter, the appropriate authority can file a complaint for the offence punishable under PC&PNDT Act. The trial would be before Metropolitan Magistrate of Judicial Magistrate First Class as provided under sub-section (2) of Section 28 of the PC&PNDT Act.

21. During the course of investigation on the complaint by the appropriate authority to take action, some crime under IPC

gets detected, the police would have the independent authority to investigate the case and file the chargesheet under IPC. Nothing provided in the PC&PNDT Act would debar the police to investigate the matter under IPC, to file charge-sheet.

21.1 In the present case, the charge-sheet is filed under PC&PNDT Act and IPC. The sections under PC&PNDT Act would be triable by the Metropolitan Magistrate or Judicial Magistrate First Class, having the territorial jurisdiction to the private complaint of the person authorized under Section 28 of PC&PNDT Act. Sections 313, 315 are cognizable, non-bailable offence and tried by the Court of Sessions.

22. Hence, the Magistrate before whom the charge-sheet would have been filed would have to commit the case to the Sessions Court, where the Sessions Court would only have the jurisdiction to try the accused under Sections 313, 315 read with Section 114 of the IPC and not under the PC&PNDT Act.

22.1 The Court before which the charge-sheet has been filed would have to direct the authority concerned to file a private complaint under PC&PNDT Act for the sections invoked, in case no such private complaint has been filed.

22.2 In view of the above observation and direction, the present application stands disposed off, as rejected.

Sd/-  
(GITA GOPI,J)

PARMAR KRISH/1