

No. W.12017/06/2013-PNDT
Government of India
Ministry of Health & Family Welfare
(PNDT Section)

Office of the Secy (Health)
Dy. Secy (H) 11/13/5265
Dated 02/05/13

Nirman Bhawan, New Delhi.
Dated the 26 April, 2013

To
Principal Secretaries (Health & FW)
(All States & UTs)

Subject: Direction of the Hon'ble High Court of Bombay in the case of Dr. Vandana Ramachandra Patil V/s State of Maharashtra and another.

Sir / Madam,

Kindly find enclosed a copy of Order dated 23.01.2013 of Bombay High Court in W.P. No. 4399/2012, in the case of Dr. Vandana Ramachandra Patil V/s State of Maharashtra and another for guidance and ready reference with regard to not to de-seal a USG once it is sealed for violation of the PC & PNDT Act and also for defending the related cases where sealing of any USG is challenged in a Court of law.

The ratio of the Court Order in the above mentioned case is as follows:

"..... 6. If the seal is opened, the accused in the case is facilitated to repeat the crime. Once a case is made out, repetition of such crime has to be prevented. It cannot be allowed to proliferate. The accused, therefore, cannot use his machine until the trial is over.

7. The order of release is mechanically made as for releasing of any other property which may not be used in the commission of the crime. The order wholly lacks sensitivity. The Court must consider the effect and the impact of each order. The vast and broad effect of such an order has not been considered by the learned Judge.

8. A Machine sealed in any case registered under PC & PNDT Act cannot be directed to be opened. In fact, it is the duty of the Investigating Officer as also the Magistrate to seal the machine and to see that it has been sealed promptly



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3/5
DFW

D. Shetty (SNDT)
Enclosures: As above

Pl. Study & list its implications at the state level & how to deal with it
our scheme of

Machine sealed
SNDT
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Yours faithfully,

(Signature)
(D. N. Sahoo)

Under Secretary to the Govt. of India
Tel: 011-23061875

Amk

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4399 OF 2012

Dr. Vandana Ramchandra Patil

Vs.

.. Petitioner

The State of Maharashtra & Anr.

.. Respondents

Mr. N. R. Bubna for the Petitioner.

Mrs. A. A. Mane, APP for Respondent No.1 State.

Dr. Mr. Krishna C. Thakkar, Respondent No.2 present.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 23rd JANUARY, 2013.

P.C.

1. Rule. Made returnable forthwith.

2. The case has been filed against respondent No.2 the Doctor, under the provisions of Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 (PCPNDT Act). Pending the criminal trial the electronic machine for sonography used by respondent No.2 in his clinic has been sealed. The licence of respondent No.2 has been suspended. The sealing is required to be made under the law. The sealing is legal and proper.

3. Respondent No.2 applied for opening the seal to use the USG machine. The learned 8th J.M.F.C., Thane under the impugned order dated 02.11.2012 directed the complainant/petitioner herein to open the seal of the machine. That order has been challenged in this petition.

4. The offence under the PCPNDT Act is committed essentially with the use of USG machine. That is the most important ingredient in the crime.

the crime is essentially repetitive in nature. The prevention of the crime is best achieved by sealing the machine. Hence the sealing of the machine is an important act in investigation of such crime.

5. It may be mentioned that the provision of sealing is like the provision of sealing the premises of a brothel in case of an offence committed under Section 18 of the Immoral Traffic Prevention Act, 1986 (ITPA). It is this power of the Magistrate that is the most potent weapon in case of prevention and further incurrance of the offence. That power has to be used under both these legislations in the interest of the general public where the State is bound to protect under the law.

6. If the seal is opened, the accused in the case is facilitated to repeat the crime. Once a case is made out, repetition of such crime has to be prevented. It cannot be allowed to proliferate. The accused, therefore, cannot use his machine until the trial is over.

7. The order of release is mechanically made as for releasing of any other property which may not be used in the commission of the crime. The order wholly lacks sensitivity. The Court must consider the effect and the impact of each order. The vast and broad effect of such an order has not been considered by the learned Judge.

8. A machine sealed in any case registered under the PCPNDT Act cannot be directed to be opened. In fact, it is the duty of the Investigating Officer as also the Magistrate to seal the machine and to see that it has been sealed promptly.

9. Respondent No.2 argued that the machine is an electronic

instrument. It has to be constantly maintained by use. The machine is seen to have been abused and misused. Citizens have no legal right to claim user of their machines if they are seen to have abused such equipment. Hence it cannot be allowed to be used by the accused pending trial.

10. Counsel on behalf of the petitioner/complainant rightly argued that whilst the license of respondent No.2 is under suspension, he cannot use the machine by which he carries on his business. Hence at best it can be used by the Mira-Bhayander Municipal Corporation by itself, who is the complainant in this case, for proper, legitimate and lawful use upon the patients of the hospital of Mira-Bhayander Municipal Corporation if it has to be maintained by continuous use.

11. Respondent No.2 states to Court that he has no objection to transfer his machine to the hospital of the Mira-Bhayander Municipal Corporation for its use for the hospital by the doctors of that hospital upon patients of that hospital. That can be allowed for the machine not to junk. It would be for respondent No.2 to transfer the machine to the hospital of Mira-Bhayander Municipal Corporation.

12. The Corporation itself has not been able to shift the machine and hence has sealed the machine in the premises of respondent No.2. If respondent No.2 can himself shift the machine, he may do so after contacting the petitioner. The petitioner may in consultation with the gynecological consultant in the hospital make arrangement for placing the said machine in the hospital premises. The seal of the machine shall not be opened until after it is shifted. The photographs of shifting shall be taken if that is done. A report then shall be filed by the petitioner of such shifting in the trial Court. The petitioner shall then open the seal and use the USG machine in her

hospital for the patients of the hospital. Respondent No.2 shall not be allowed to operate the machine in the hospital at any time.

13. The impugned order of the learned Magistrate dated 2nd November, 2012 is set aside.

14. The USG machine of respondent No.2 in the premises of respondent No.2 shall remain sealed until it is shifted as aforesaid or until the trial is over. The Investigating Officer shall regularly inspect the machine and keep record of the inspection.

15. The Registrar (Judicial) of this Court shall send the copies of this order to all the J.M.FCs. and Sessions Court Judges at all levels in Maharashtra.

(ROSHAN DALVI, J.)