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Presented on 20/12/2011
 by Shri. G.T. Jadhav Adv
 [Signature]
 Judicial Magistrate, F.C.,
 FIRST Court, Thane.



सहायक न्यायालय
 न्यायदंडाधिकारी, प्रथम वने
 वृद्धि न्यायालय, ठाणे

IN THE COURT OF THE JUDICIAL MAGISTRATE F.C. THANE
 AT THANE.

O.M.A.No. 931 of 2011
 in
 Pvt.C.C.No.15923 of 2011
 U/s 23,25,26 and 29 of P.C.P.N.D.T.
 Act.

Dr.Sangita Kamal Modi,
 Adult, of Modi Hospital, Shreenagar,
 Thane, and residing at B-701 Dhaivat
 Tower, Kalpnagari, B.R.Road,
 Mulund (W)-Mumbai-80.).. Applicant

V/s

Dr.R.T.Kendre,
 Adult, Medical officer of Thane
 Municipal Corporation, Thane.).. Opponent

Complainant To
 [Signature]
 20/12/2011

Application u/s 457 of
 Cri.Pro.Code.

MAY IT PLEASE YOUR HONOUR -

The applicant abovenamed submits that -

That the ~~applicant~~ ^{opponent} on 9-7-2011 at about

5 to 6 hrs. visited at the Hospital of the applicant

the affidavit u/s 10(1)(1a), not fixed the Board in Marathi and English language ~~w/x~~ under P.C.P. N.D.T.Act 1994 and not fixed the registration Certificate and committed an offence under P.C.P. N.D.T.Act. Therefore the opponent has sealed the Sonography Machine of the applicant, the said panchanama signed by Panch Smt.Usha Vishwakarma, and Sunita Yadav, which is annexed alongwith this application.

The applicant submits that shr is totally innocent and has not committed any offence deliberately. The applicant is in badly need of the ~~said~~ removal of the seal over the said Sonography machine for running her Ultrasound Clinic. Hence applicant is preferring this application on following grounds -

GROUND S

1. That the applicant is innocent and has been falsely implicated in the above alleged complaint.
2. The applicant has been running his Clinic by following all rules and regulations of Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994.
3. The applicant has not committed any offence



under the Pre-Conception and Pre-Natal Diagnostic Techniques (Proh. of Sex Selection Act 1994 or any other act.

4. The applicant has purchased the said machine by borrowing loan from relations and friends.
5. The applicant require ~~the~~ removal of the seal of the said machine for running his clinic and the said machine is only bread and butter of applicant.
6. The said machine is made in Australia which is very delicate, sensitive and it is highly specialized electronic machine which require proper condition of storage and day to day maintainance. Its require periodic servicing from skilled technicians for its normal functioning.
7. If the said machine kept in unused condition even for a week then it will deplete the battery and willlead to malfunctioning as well as spare parts of the said machine are imported and same are very costly and if any part will damaged it is very difficult to arrange for the same.
8. The applicant undertake not to sell or dispose off the said machine pending final disposal of the matter.
9. The applicant further undertake not to commit any



of the said Sonography machine is removed.

10. The applicant undertake to produce the said machine before the Hon.Court if require.

11. The applicant undertake to abide any conditions imposed by the Hon.Court.

The applicant therefore prays that -

The Opponent be directed to remove the seal of the said Sonography Machine which is lying in Modi Hospital, Shreenagar, Thane, in the interest of justice.

Thane,dt.20-12-2011

Sangita
Applicant

VERIFICATION

I, Dr.Sangita Kamal Modi, adult the applicant abovenamed do state on solemn affirmation that whatever stated hereinabove is true and correct and I have signed this 20th day of Dec.2011.

Filed in Court
on 20-12-2011

Sangita
Applicant

Chadha

Advocate for applicant



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ORDER BELOW EXH.

1/- The accused has submitted that the complainant has filed the present complaint under section 10(1)(1A) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. The accused/applicant further submitted that the USG machine has been sealed by the complainant. If the seal is not removed then the accused/applicant will suffer heavy loss. Hence the accused/applicant prayed that the complainant be directed to remove the seal over the USG machine.

2/- On the other hand the complainant submitted that the USG machine has been sealed on 08/07/2011 since the accused/applicant were found in breach of the provisions of the Act. The machine was seized because it was capable of being used for the purpose of detection of the sex of the fetus. Hence the complainant prayed that the application of the accused/applicant be rejected with costs.

3/- The Ld. Adv. for applicant submitted that, in the present case machine was seized from the hospital without issuing show-cause notice to the applicant as per the sec. 28 of PCPNDT Act. Some other doctors are also working in the said hospital than accused. Hence seizer of sonography machine will be harmful and in-convenient considering the practice and reputation of other doctors working in that hospital. He also filed certain citations in support of his contention.

4/- Perused the application, say and documents filed on record



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by both the parties at length. Section 30 of the PCPNDT Act empowers the appropriate authority and its officer to search, seize and seal any material object if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this act. In the present case it is alleged that 5 forms were not fulfilled properly. There was no signature on affidavit of applicant. Moreover it is also alleged that registration certificate under PCPNDT Act was not fixed. Hence the accused/applicant committed an offence u/s 10(1)(1A) r/w 25 of the Act. In my considered view, considering the nature of the offence, the seized and sealed USG machine would not be useful an evidence for proving the charges against the accused/applicant. Moreover the prices of such machines are very high. If it is kept unattended then possibility of deterioration cannot be ruled out. Therefore in my view no purpose would be served by keeping the machine under seal. Hence this application deserves to be allowed. The interest of prosecuting authority can be served by imposing certain conditions in respect of the use of the machine. In result, I pass the following order :

ORDER

1. The application of the accused is hereby allowed.
2. The complainant is directed to open the seal of the USG machine, pending the trial.
3. The said machine be released in favour of the accused on furnishing the indemnity bond of Rs. 20,00,000/- (Rupees Twenty Lakh only) before the Court on the condition.
4. The applicant shall put silent observer to the sonography machine within 15 days after returning the



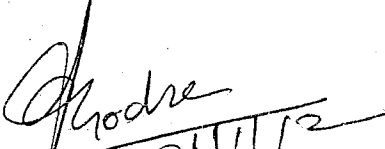
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same to her and shall submit its report accordingly.

5. That she shall produce the said seized and sealed machine as and when required by this court.
6. That he shall not use the USG machine for illegal purpose and shall maintain proper record as per the PCPNDT Act and rules made thereunder.
7. Issue letter to concerned authority.

Thane
Date : 21/01/2012


(Smt. A.A. Godse)
21/1/12
10th Jt C.J.J.D. & J.M.F.C. Thane

