



CRR-1541-2008 (O&M)

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

CRR-1541-2008 (O&M)

Reserved on : 24.09.2025

Date of Pronouncement : 01.10.2025

R.S. Malik

... Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE H.S. GREWAL

Present:- Mr. Anupam Gupta, Senior Advocate with
Mr. Gautam Pathania, Advocate and
Mr. Sukhpal Singh, Advocate for the petitioner.

Mr. Tapan Masta, Additional Advocate General, Haryana.

H.S. Grewal, J.

1. The instant revision petition has been preferred by the petitioner against the judgment dated 14.08.2008 passed by the learned Sessions Judge, Hisar, whereby the appeal filed against the judgment of conviction and order of sentence dated 09.01.2008 & 10.01.2008 respectively passed by the learned Chief Judicial Magistrate, Hisar, in a complaint case under the Pre-conception & Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, (hereinafter referred as 'the PC & PNDT Act'), has been partly allowed qua reduction of sentence only.



2. The instant complaint was filed on 21.12.2006 by the State of Haryana through District Appropriate Authority-cum-Civil Surgeon, Hisar, who has been appointed as District Appropriate Authority under Section 17(2) of the Act and as amended by Amendment Act, 2002 (14 of 2003) and Rules, 1996 for alleged deficiencies in maintenance of records resulting into contravention of Sections 4(3) and 5(1)(b) read with Rule 9 and Section 29 of the PC & PNDT Act punishable under Section 23 thereof.

3. The brief facts of the case are that Malik Ultrasound & X-ray Centre, Hisar is a registered genetic clinic under Section 3 of the PC & PNDT Act having registration No.11 granted on 31.10.2001 and the petitioner-Dr. R.S. Malik is the competent, qualified, responsible person and Incharge of the Centre for the conduct of its business as detailed by him in the application form. On 06.10.2006, District Nodal Officer (PNDT) requested the complainant with reference to news on IBN-7 Channel and Newspapers of Dainik Jagran & Dainik Bhaskar to take action against the petitioner and the aforesaid Clinic. On the basis thereof, the complainant constituted a team consisting of Dr. R.P. Singhal, Dr. Himani Kansal and District Nodal Officer (PNDT), Dr. Ashok Chaudhary and directed them to proceed further in the matter. On the same day, the premises of the petitioner was inspected but he was not available and as such, his premises was sealed. On the following day, the petitioner made a request for unsealing the premises for inspection. Subsequent thereto, the team consisting of Dr. Arun Gupta, Dr. Himani Kansal and District Nodal Officer, Dr. Ashok Chaudhary inspected the premises. Spot



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memo was prepared of the seized records which were anti-natal register having records from April, 2005 to October, 2006 and original 'Form F' with referral slips for the month of August and September, 2006. Thereafter, two ultrasound machines were also sealed by the team from the premises of the petitioner. Spot memo and seizure memo were prepared. From perusal of seized records, it was found that *prima facie*, there was gross contravention of provisions of the PC & PNDT Act and as such, registration of the petitioner's Clinic was suspended under Section 23 of the PC & PNDT Act vide letter dated 08.10.2006. The petitioner was asked not to engage in any activity under the PC & PNDT Act till further orders. Thereafter, a show cause notice was issued on 18.10.2006 against which reply was furnished by the petitioner vide letter dated 21.10.2006. He was also afforded personal hearing on 24.10.2006. As per the records seized on 06.10.2006 from the premises of petitioner, it was found that there were multiple violations in Form 'F' as provided in Rule 9(4) of the PC & PNDT Act, which are as follows:-

<u>Sr. No.</u>	<u>Date</u>	<u>Defect Found</u>
6.	28.09.2006	Referral slip is not signed by referring doctor.
10.	23.09.2006	Declaration is not signed/thumb-marked by pregnant woman.
46.	04.09.2006	History of genetic/medical disease in the family, indications of prenatal ultrasound is not mentioned.
52.	05.10.2006	Referral slip is not signed by referring doctor.
6.	28.08.2006	Referral slip is not signed by referring doctor.
8(A)	28.08.2006	Referral slip is not signed by referring doctor.
9.	28.08.2006	Referral slip is not properly filled up.
19.	23.08.2006	Referral slip is not signed by referring doctor.
21.	22.08.2006	Referral slip is not signed by referring doctor.



4. Apart thereof, it was also found that indication for prenatal diagnosis are not mentioned on all 'form F' filed in the month of August, 2006 to September, 2006 and result of ultrasound is not mentioned on any of the form seized during inspection as recommended in PC & PNDT Act at Serial No.14 of prescribed form 'F'.

5. After recording the statement of PW1 in pre-charge evidence, the petitioner was chargesheeted under Sections 4(3) and 5(1)(b) read with Rule 9 of the PC & PNDT Act and Section 29 which are punishable under Section 23 of the PC & PNDT Act, to which he pleaded not guilty and claimed trial.

6. After framing of charge, PW1 S.K. Naval, District Appropriate Authority was recalled for the purpose of cross-examination. Besides this, PW2 Dr. Ashok Chaudhary was also examined in after-charge evidence.

7. Upon conclusion of prosecution evidence, the statement of the petitioner under Section 313 Cr.P.C. was recorded wherein he had denied all the allegations and pleaded innocence.

8. In defence evidence, the petitioner examined DW1 Dr. Suman Thakral, DW2 Dr. Satyawar, DW3 Harinder Sharma, DW4 Dr. Arun Gupta, Radiologist and the petitioner himself appears in defence as DW5.

9. After considering the statements of all the witnesses and taking into account the evidence led by both the sides, the trial Court had convicted the petitioner for the commission of an offence under Section 4(3) read with Rule 9 punishable under Section 23 of the PC & PNDT Act and sentenced him



to undergo rigorous imprisonment for 02 years, to pay a fine of Rs.5,000/- and in default thereof, to undergo further simple imprisonment for 02 months.

10. Aggrieved against the aforesaid judgment, the petitioner had preferred an appeal before the Sessions Judge, Hisar which was partly allowed vide judgment dated 09.08.2008 while considering the age of the petitioner to be around 60 years, and his sentence was modified/reduced to one year under Section 4(3) read with Rule 9 punishable under Section 23 of the PC & PNDT Act. However, the fine was ordered to remain same.

11. Against the aforesaid judgment, the present revision petition has been preferred by the petitioner.

12. Learned Senior counsel for the petitioner submitted that the complaint was not filed by a competent authority. The same could have only been filed by the District Appropriate Authority which was to be a three-member committee appointed through a Notification under Section 17 of the PC & PNDT Act. However, in the instant case, the complaint had been filed by the Civil Surgeon-Dr. S.K. Naval alone claiming himself to be the District Appropriate Authority. Therefore, the impugned judgments were liable to be set aside. In support of his submissions, learned Senior counsel has placed reliance on the judgments of the Coordinate Benches of this Court in the case of ***'M/s Kamboj Ultrasound and Diagnostic Pvt. Ltd. and others versus State of Haryana'*** bearing CRR-1499-2008, decided on 15.05.2025, ***'Help Welfare Group Society versus State of Haryana and others'*** 2014(3) RCR(Criminal) 764, ***'Dr. Ritu Prabhakar and another versus State of Haryana and another'***



bearing CRM-M-21764-2015, decided on 03.06.2016 and '***Dr. Anil Bansal versus The District Appropriate Authority, Gurugram*** bearing CRM-M-18417-2018 decided on 24.02.2020'.

13. On the other hand, learned State counsel fairly admitted that the District Appropriate Authority, which was authorized to file a complaint, could only be a three-member committee and the complaint filed at the instance of a Civil Surgeon alone claiming himself to be a District Appropriate Authority is not maintainable. He, however, submitted that the complaint was filed in the year 2006, the summoning order was issued on 21.12.2006 and the petitioner came to be convicted on 09/10.01.2008. This Court had interpreted Section 17(3)(b) of the PC & PNDT Act to the effect that the complaint could only be filed by the District Appropriate Authority which was to be a three-member Body only in the year 2014 and therefore, prosecutions initiated earlier could not be vitiated. Therefore, the present revision petition was liable to be dismissed.

14. I have considered the arguments raised by both the parties and have carefully gone through the material available on record.

15. The first question which is required to be answered is as to what is the effect of a subsequent interpretation to a provision of law. The said question has been answered strongly by the Hon'ble Supreme Court in the case of '***Lily Thomas versus Union of India 2000(3) RCR (Civil) 252***' and the relevant extract thereof is reproduced hereinbelow:-

"44. We are not impressed by the arguments to accept the contention that the law declared in Sarla Mudgal's case cannot be



applied to persons who have solemnized marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid down any new law but only interpreted the existing law which was in force. It is settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the Court does not legislate but only gives an interpretation to an existing law. We do not agree with the argument that the second marriage by a convert male Muslim has been made an offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is liable to be dismissed on this ground alone.”

16. Similarly, in the case of ‘**Sarwan Kumar and another versus Madal Lal Aggarwal, 2003(1) RCR(Rent) 347**’, the Hon’ble Supreme Court has held as under:-

“12. In Lily Thomas & Ors. case (supra) while rejecting the contention that the law declared in Sarla Mudgal's case (supra) could not be applied to persons who had solemnized marriages in violation of the mandate of law prior to the date of the judgment, this court held :

"We are not impressed by the arguments to accept the contention that the law declared in Sarla Mudgal case cannot be applied to persons who have solemnized marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law. We do not agree with the arguments that the second marriage by a convert male Muslim has been made an offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects



argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is liable to be dismissed on this ground alone."

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19. In the present case because of the operation of Section 14 of the Act the only authority to pass a decree for ejectment of the tenanted premises is the Rent Controller appointed under the Act and Section 50 of the Act specifically bars the jurisdiction of the civil court to entertain any suit or proceeding in so far as it relates to the eviction of any tenant from the premises which were covered by the Dehi Rent Control Act. The civil court lacked the inherent jurisdiction to take cognizance of the cause and to pass a decree. Challenge to such a decree on the ground of nullity could be raised at any later stage including the execution proceedings. Tenancy of the building was governed by a special Act and therefore the decree passed by the civil court was a nullity and therefore inexecutable.

Judgment-debtors had not filed their written statement in the civil court and no issue regarding the jurisdiction of the civil court to try the suit was framed. Tenant in the special leave petition in this Court raised the contention that the eviction decree passed by the civil court could not be executed against them. This Court refused to go into that question as it was not the subject matter of the order under appeal. It was left open to the judgment-debtors to raise this ground before the appropriate forum, if available to them under law.

The only forum where the judgment-debtors could raise the objection regarding the executability of the decree was in the execution proceedings which they did. Since the jurisdiction of the civil court was barred, the decree passed by it was a nullity and the judgment-debtors could successfully raise objection regarding



*the executability of such a decree. The executing court erred in holding that judgment-debtors could not raise the objection to the executability of the decree being nullity having been passed by a court lacking inherent jurisdiction to do so. This Court in **Gian Devi Anand's case (supra)** did not lay down any new law but only interpreted the existing law which was in force. As was observed by this Court in Lily Thomas's case (supra) the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. In **Gian Devi Anand's case (supra)** the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal. The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. This Court declared that the civil court had no jurisdiction to pass such a decree. It was not a question of taking away the jurisdiction it was the declaration of law by this Court to that effect. The civil court assumed the jurisdiction on the basis of the interpretation given by the High Court in Gian Devi Anand's case, which was set aside by this Court.”*

17. Thus, it is apparent that the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the Court decides that the interpretation given to a particular provisions earlier was not legal, it declares the law as it stood right from the beginning of its promulgation.



18. In the light of the aforementioned decisions of the Hon'ble Supreme Court, the arguments of the parties along with the relevant provisions of law are required to be considered.

19. With regard to the question in hand, it is pertinent to cite Section 17 of the Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 which reads as under:-

“17. Appropriate Authority and Advisory Committee.—

(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.

(2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.

(3) The officers appointed as Appropriate Authorities under subsection (1) or sub-section (2) shall be,—

[(a) when appointed for the whole of the State or the Union territory, consisting of the following three members:—

(i) an officer of or above the rank of the Joint Director of Health and Family Welfare— Chairperson;

(ii) an eminent woman representing women's organisation; and

(iii) an officer of Law Department of the State or the Union territory concerned:

Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:



Provided further that any vacancy occurring therein shall be filled within three months of the occurrence;]

(b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.”

20. A Coordinate Bench of this Court in the case of ***‘Help Welfare Group Society versus State of Haryana and others (supra)*** has held as under:-

“5. The question which arises for consideration is whether even where the appointment is for a part of the State or the Union Territory, it should be multi-member three member body or only single member body consisting of officer of such rank as the State Government may deem fit.

6. In our view, the purposive construction must be given to the said provisions and the intent to have a multi member body is not eschewed in Sub-section (b) when the appointment is for a part of the State or the Union Territory. We find it difficult to accept that if the appointment is for the whole of the State, it will be three member committee, while it is for part of State, it will be single member committee. The only change is that the Chairperson need not be of the rank of Joint Director of the Health and Family Welfare, but of such other rank as the State Government may deem fit. It will still continue to be a multi-member committee having an eminent woman representing women's organisation and officer of the Law department of the State as a member.

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8. We may examine the matter from another perspective i.e. the very objective for which these authorities are to be appointed under the said Act. In that context also when examined, such a multi-member body of three members would far better serve the



ends rather than the Civil Surgeon alone being the appropriate authority.”

21. In the case of ***‘Dr. Ritu Prabhakar and another versus State of Haryana and another (supra)***, following observations were made:-

“31. Another important aspect of the matter is that the complaint filed against the petitioners has not been validly instituted. The paragraph 1 of the complaint gives the constitution of an appropriate authority for the district consisting of three officials i.e. Chairman and two other members; but a perusal of the complaint clearly reveals that the same has been signed only by the Chairperson and there is nothing on record to prove that rest of the two members of the appropriate authority have either signed or authorized the chairperson for filing the complaint against the petitioners. The provisions of Section 28 of the PC & PNDDT Act contemplates that no Court shall take cognizance of an offence under this Act except on the complaint made by the appropriate authority concerned, or any Officer authorized in this behalf by the Central Government or State Government and the relevant part of Section 28 of the 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 authorized in this behalf by 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.”*

Admittedly in the present case, the State Government while issuing notification dated 7th November 2013, Annexure P-15 has constituted the Appropriate Authority for the district consisting of the following officers namely:-



<i>“ i) Civil Surgeon</i>	<i>Chairperson</i>
<i>ii) District Programme</i>	<i>Member</i>
<i>Officer Women and Child</i>	
<i>Development Department.</i>	
<i>iii) District Attorney</i>	<i>Member</i>

In the case in hand, the complaint was signed only by the Civil Surgeon claiming to be the chairperson of the Appropriate Authority and in this regard a Specific ground is taken under para 6(L) of the petition as well as during the course of arguments also a plea was raised on behalf of the petitioners before this Court to the effect that the complaint is not maintainable in view of the fact that the same is not validly instituted due to the lack of authorization and signatures by other two members of the Appropriate Authority.

Even in the reply filed on behalf of the respondents also, the averment made in para 6(L) of the petition are not denied, rather the same are admitted in following terms:-

“ In reply to part L of para 6 of the petition, it is further submitted that the civil surgeon is part and parcel of D.A.A. And has acted upon the opinion as advise of the DAA which makes him competent as well as authorized person to file the complaint and for proceedings thereof.”

Thus, neither in the complaint nor in the reply filed by the respondents or during the course of arguments it has been brought to the notice of this Court that there is any authorization to file the present complaint against the petitioners in consonance with the provisions of Section 28 of the PC & PNDT Act. Consequently, on the point whether the complaint against the petitioners is validly instituted or not, this Court comes to the firm conclusion that the complaint is signed and filed only by Dr. Inderjit Dhankar, Chairperson claiming himself to be District Appropriate Authority (PNDT)-cum-Civil Surgeon, Panipat and other two members have not signed the same and thus the same is not validly instituted in



consonance with the Section 28 of the PC & PNDT Act. As a result, it is held that the complaint is not instituted in the manner provided under Section 28 of the PC & PNDT Act and consequently the entire proceedings are vitiated being illegal in law. However, this issue has not been examined by both the learned Courts below in its true prospect and, as such the same has resulted into a grave miscarriage of justice.”

22. The Special Leave Petition to Appeal (Crl.)...CRLMP No(s).17069/2016 titled as ‘**State of Haryana and another versus Ritu Prabhakar and anr.**’ filed against the above-said judgment was dismissed by the Hon’ble Supreme Court on 11.11.2016.

23. Moreover, in the case of ‘**Dr. Anil Bansal versus The District Appropriate Authority, Gurugram (supra)**’, the Coordinate Bench has held as under:-

“30. After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons:

“(a) A perusal of letter dated 12.09.2016, constituting a PNDT Team by the Chairman, DAA-cum-Civil Surgeon, Jhajjar, clearly shows that it is signed by two members and not by the third member i.e. Member, DAA-cum-DPO(WCD), Jhajjar, therefore, it is not signed by a validly constituted District Appropriate Authority as per Section 17 of the PC & PNDT Act.

(b) Even a perusal of another order dated 12.09.2016, issued by Chairman, DAA-cum-Civil Surgeon, Gurugram, appointing a three member PNDT Team, shows that it was done under his sole signature and not by the other two members. This fact is not disputed in the reply/affidavit of the Deputy Civil Surgeon-cum-PNDT Nodal Officer, Gurugram, therefore, in view of the judgment in Dr. Ritu Prabhakar's case (supra), the whole procedure stands vitiated as the lapse on the part of both the District Appropriate Authorities is incurable defect.

(c) Further, as per procedure prescribed under Section 30 of the PC & PNDT Act read with Rule 12, it is mandatory to



provide the copies of spot and seizure memos, if prepared at the spot, to a persons from whom the recovery is effected, however, a perusal of the impugned complaint as well as the reply filed in Court, nowhere shows that this procedure was followed and a copy of the list prepared by the team was ever supplied to petitioner, though in para 7 of the complaint, it is stated that spot and seizure memos were prepared at the spot but a copy thereof was never supplied to the petitioner. This also vitiates the procedure adopted by the complainant.

(d) As per provisions, the complaint is to be filed by the District Appropriate Authority, which consists of three members, whereas the impugned complaint has been filed by the District Nodal Officer. It is also held by the Court in Ishwar Singh Yadav's case (supra) that the District Appropriate Authority cannot delegate its powers, therefore, the procedure adopted by the District Appropriate Authority, Gurugram is totally illegal, which cannot be termed as an curable irregularity.

(e) Therefore, in view of the well settled principles of law, when chances of conviction of petitioner are bleak, no purpose will be served to allow continuation of his prosecution.”

24. A perusal of the aforementioned judgments indicates that under Section 17(3)(b) of the PC & PNDT Act, the District Level Appropriate Authority is also to be a three-members committee. Therefore, this interpretation of the law would deem to exist from 20th September, 1994 itself i.e. the date of promulgation of the PC & PNDT Act.

25. In the present case, the complaint was filed by Dr. S.K. Naval alone. However, the complaint must be filed by a three-member Committee, which is to be officially constituted through a government notification under Section 17 of the PC & PNDT Act. Since no such committee had been appointed and the complaint was not filed by the proper authority, the complaint itself was legally defective and not maintainable. Since the case was

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flawed at its very foundation, all the subsequent proceedings including the trial and the petitioner's conviction stood invalid and could not be sustained.

26. In view of the above, the instant revision petition is allowed. The judgment passed by the learned Sessions Judge, Hisar on 14.08.2008 as well as the judgment of conviction and order of sentence dated 09.01.2008 & 10.01.2008 respectively passed by the Chief Judicial Magistrate, Hisar respectively are hereby set aside. The petitioner is acquitted of the charges levelled against him.

27. Pending application(s), if any, shall stand disposed of accordingly.

01.10.2025
A.Kaundal

(H.S.GREWAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No