

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition(s) for Special Leave to Appeal (Crl.) No(s).8818/2023

(Arising out of impugned final judgment and order dated 16-06-2023 in CRLWP No. 851/2021 passed by the High Court of Judicature at Bombay at Aurangabad)

NIVRUTTI KASHINATH DESHMUKH (INDORIKAR) Petitioner(s)

VERSUS

BHASKAR MADHAVRAO BHAVAR & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.139598/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.139595/2023-EXEMPTION FROM FILING O.T.)

Date : 08-08-2023 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. Sri Narayan Shukla, Adv.
Mr. Sanjay Mani Tripathi, Adv.
Mrs. Gouri Karuna Das Mohanti, Adv.
Ms. Anu Gupta, AOR
Mr. V Elangovan, Adv.
Mr. Kamal Kant Tripathi, Adv.

For Respondent(s) Ms. Indira Jaising, Sr. Adv.
Mr. Jitendra V. Patil, Adv.
Ms. Neha Kamble, Adv.
Mr. Sagar N. Pahune Patil, Adv.
Mr. Paras Nath Singh, Adv.
Mr. Rohin Bhatt, Adv.
Mr. Avnish Pandey, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. S.N. Shukla, learned counsel appearing for the petitioner. Also heard Ms. Indira Jaising, learned senior counsel, who has intervened on behalf of the respondent No.3, i.e., de-facto complainant.

2. A complaint against the petitioner was lodged under

Section 28(1) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "Act, 1994"), which led to process being issued against the petitioner by the JMFC, Sangamner on 03.07.2020 under Sections 22(1) and (2) of the Act, 1994.

3. The petitioner sought discharge from the process but although it was allowed by the learned Additional Sessions Judge, on appeal, the High Court restored the order of the JMFC, Sangamner issuing process against the petitioner.

4. We have perused the following provisions of the Act:-

"2(o) "sex selection" includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex;

6. Determination of sex prohibited.- On and from the commencement of this Act,-

XXXXX

(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.

22. Prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention.-- (1) No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic including Clinic, Laboratory or Centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such Centre, Laboratory, Clinic or at any other place.

xxxxxxx"

5. As can be seen, the definitions are broadly worded and at this stage only process is issued against the petitioner on the basis of prima facie understanding of the complaint filed against him.

6. Having considered the above and the strict liability envisaged under the Act, 1994, we see no reason to interfere with the impugned judgment of the High Court.

7. The special leave petition is accordingly dismissed.

8. However, it is made clear that this order is to be understood as only for the purpose of the present proceedings but should have no bearing on the case of either the prosecution or the defence, before the concerned court.

9. Pending applications, if any, also stand disposed of.

(RAVI ARORA)
PS TO REGISTRAR

(RENU BALA GAMBHIR)
COURT MASTER (NSH)