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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 19.11.2026***

\# **CNR No. DLHC010235462025**

\+ **CRL.M.C. 2812/2025, CRL.M.A. 12558/2025**

(108) NARESH KUMAR GUPTA & ANR. .....Petitioner

Through: Mr. Manav Vohra, Ms. Kavita Nailwal, Advs.

versus

STATE NCT OF DELHI AND ANR .....Respondent

Through: Mr. Naresh Kumar Chahar (APP)
Mr. Utkarsh (APP) along with Mr. Abhiraj Singh, Adv. for R2
SI Chetan (P.S. Pashim Vihar West)

\# **CNR No. DLHC010878342025**

\+ **CRL.REV.P. 449/2025, CRL.M.A. 33163/2025**

(109) NARESH KUMAR GUPTA & ANR. .....Petitioner

Through: Mr. Manav Vohra, Ms. Kavita Nailwal, Advs.

versus

STATE NCT OF DELHI AND ANR .....Respondent

Through: Mr. Naresh Kumar Chahar (APP)
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SI Chetan (P.S. Pashim Vihar West).

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. These petitions arise out of a Criminal Case (Cr. Case) No. 9213/2020, pending before ld. Judicial Magistrate First Class-08, West District, Tis

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Hazari Courts, Delhi. The petitioners herein are Naresh Kumar Gupta (petitioner no. 1) and his Sole Proprietorship Firm, namely, M/s Masters Medical Equipment (petitioner no. 2). Respondent no.2 is the District Appropriate Authority (West), appointed under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter "*PCPNDT Act*").

2. The factual background is that the District Inspection & Monitoring Committee of PC & PNDT Cell (West), with prior approval of DDA/DM (West), along with SDM, Punjabi Bagh, and District Nodal Officer, PC & PNDT Cell (West), inspected the alleged address of petitioner no. 2. Upon such inspection, the aforesaid inspecting authorities seized several documents and consequently found that petitioner no. 2 has engaged in unauthorised sale/distribution/dealing of MRI and other medical equipment, without mandatory registration. The same was communicated by SDM, Punjabi Bagh, Delhi, to the SHO, Mianwali Nagar. Consequently, FIR No. 323/2017, dated 14.07.2017, was registered at P.S. Mianwali Nagar, Outer District, Delhi, under Section 25 of the PCPNDT Act. Thereafter, a chargesheet was filed, by way of which Section 23 of the PCPNDT Act was added.

3. On 29.11.2024, the Appropriate Authority filed a complaint under Section 28 of the PCPNDT Act read with Section 200 of the Code of Criminal Procedure, 1973 (hereinafter "*CrPC*"), alleging violation of Circular No. F.No. 9(10)65/PNDT/DFW/14/4308.

4. By the order dated 11.03.2025 in Criminal Case (Cr. Case) No. 9213/2020 (impugned in CRL.M.C. 2812/2025), took cognisance of the aforesaid complaint in the following manner:

> "*In the present case cognizance was taken by Ld. Predecessor of this*

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Court on 27.10.2022. The cognizance was taken after filing of police charge-sheet. Thereafter the matter was listed for arguments on charge.

Later on, complaint has been filed on behalf of the department. The trial should have proceeded on the basis of complaint case rather than police case. ***It is settled law that cognizance is taken of the facts, circumstances and ingredients of the offence. It is immaterial whether the cognizance is taken upon police report, complaint or on the knowledge of the Magistrate. Since, cognizance has already been taken by the Ld. Predecessor, this court deem it appropriate that the present proceedings be continued as a complaint case.***"

(emphasis supplied)

5. *Vide* order dated 10.09.2025 in Crl. Case 9213/2020, the matter was put up for framing of charges. Subsequently thereto, the trial Court, by order dated 16.09.2025, framed charges under Sections 25/26 read with Section 3B of the PCPNDT Act. Both these orders are assailed in CRL.M.C. 449/2025.

6. It is the sole contention of the petitioner that cognisance on a police report is barred by Section 28 of the PCPNDT Act, and that the complaint of the Authorised Authority was never considered on its own merits.

7. Section 28 of the PCPNDT Act reads as follows:

"*28.* ***Cognizance of Offences:***
(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 1[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.
Explanation.-- For the purpose of this clause, "person" includes a social organisation.
(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.

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> *(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.*"
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> (emphasis supplied)

8. This Court finds merit in the aforesaid contention of the ld. counsel for the petitioner; the same is in consonance with the decision of the Supreme Court in ***State of U.P. v. Brij Pal Singh*, 2026 SCC OnLine SC 1673**. The relevant observations therein are as under:

> "*6.4.* ***Section 28 prohibits taking of cognizance by a court except in two scenarios, (a) The AA or the AO of the Central, State Government or AA shall make the complaint to the Court; (b) on a complaint by any person, not less than fifteen days' notice to the AA of his intention to make the complaint.***
>
> ***
>
> *10.3.* ***One submission of the Union of India was that Section 28 of the Act only restricted the Court's power to take cognizance and nothing else.*** *But the question that we put to ourselves is what would be the logical conclusion of the investigation carried out by the police? Once it undertakes an investigation, the police have two options available to it. One, is to file a closure report, if it finds that no offence is made out, or two, to file a chargesheet upon the completion of the investigation. A chargesheet obviously is filed before a Court. To what end though?* ***The Court cannot take cognizance thereof due to the mandatory jurisdictional bar under Section 28, and, as such, the effort made by the police would result in being nugatory in the eyes of law. Can such an interpretation be countenanced in law? Certainly not. Regarding Section 28, we may further observe that it also provides for a 'person' to make a complaint, with notice to the AA of such complaint and of the intent to make a complaint before the court. So, it provides two methods for a complaint to be made under Section 28(1)(a) & (b), and in both scenarios the AA is indispensable. Still further, it is provided in the Explanation to Section 28 that a 'person', within its meaning, includes a social organisation.*** *The legislature has taken care to explain the meaning of a person as being inclusive of only a social organisation, and in all other scenarios a 'person' has to be*

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understood in its general meaning. ***In other words, it may be that a police official, in his private capacity, can make a complaint to the court or to the AA by following the requisite procedure but the police as an institution have not been covered within the meaning of 'person'.*** *Given that, outside its ordinary meaning, a person may include entities such as companies or individuals, but however in the Act, only social organisations have been expressly included within its meaning.* ***We, therefore, find force in the submission that the language of Section 28 impacts jurisdiction and is prohibitory****.*

***

11. … Question 1 - Whether, for offences under the PC & PNDT Act, the registration of FIR at the police station is permissible, merely because the offences under the PC & PNDT Act have been made cognizable and non-bailable?

Answer 1 - ***The language of the statute, more particularly Sections 27 and 28 of the Act when read together, in light of the other provisions and the socially beneficial nature of the Act as also the requirement of sensitivity along with medical and technical know-how, indicates that the police are not meant to be the investigators for the purpose of this Act. This is further made clear by the fact that an FIR once registered cannot be taken to its logical conclusion as per the procedures of this Act. The restriction applies only to offences under this Act and does not restrict the police's power to investigate or prosecute independent offences disclosed under substantive criminal law (IPC/BNS)****.*

Question 2 - Whether the police investigation is permissible for the offences under the PC & PNDT Act? And who can investigate the complaints, received for violation of the provisions of the PC & PNDT Act?

Answer 2 - ***Section 17(4) of the Act, while describing the functions of the AA, clearly states that investigating the complaints is its responsibility. Rule 18A(3)(iv), which has statutory force, also requires that recourse to the police be avoided "as far as possible". It necessarily has to be concluded, therefore, that the police cannot be the main investigating authority. At best, the police may play a supplemental role, as and when required by the AA under its supervision****.*

Question 3 - Whether on the chargesheet submitted after the investigation by the police, the competent magistrate can take cognizance of the offence under the PC & PNDT Act?

Answer 3 - ***Section 28 of the Act envisions a complete statutory***

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> ***embargo on the taking of cognizance except in situations and scenarios provided thereunder. The answer has to be clear. The competent Magistrate shall not be able to take cognizance upon the filing of a chargesheet***."
>
> (emphasis supplied)

9. To the same effect, a Coordinate Bench of this Court in ***Manoj Krishan Ahuja v. State (NCT of Delhi),* 2023 SCC OnLine Del 2303**, *inter alia*, observed as under:

> "*30.* ***Thus, it is clear from a bare reading of Section 28 of PC&PNDT Act that there exists a bar on Courts as far as taking cognizance of an offence under the Act is concerned, and the same can only be taken in accordance with Section 28 of the Act.***
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> ***
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> *32. Having discussed the procedure contemplated under Section 28 of the Act in the preceding discussion, this Court notes that the manner in which the cognizance was taken by the learned Trial Court upon a chargesheet is not the procedure envisaged under the PC&PNDT Act.* ***In the present case, the complaint had to be filed by the concerned Appropriate Authority before the learned Trial Court as a complaint under Section 200 Cr. P.C. Since the cognizance has been taken on the chargesheet filed under Section 173 of Cr. P.C., it is clearly in the teeth of the bar under Section 28 of this Act which bars cognizance except upon receipt of complaint in the manner provided therein.*** *It is also the sine qua non for taking cognizance that the said Appropriate Authority or the person so authorised should be validly appointed.*"
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> (emphasis supplied)

10. In light of the settled position of law that cognisance cannot be taken on the basis of a police report/chargesheet invoking only the offences under the PCPNDT Act, the order dated 27.10.2022 (referenced in the impugned order, dated 11.03.2025), by way of which cognisance was taken on a chargesheet, is bad in law and therefore, quashed. Therefore, the question which remains before this Court is whether a subsequent complaint by the Authorised

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Authority can cure the defect of taking cognisance on the basis of the chargesheet.

11. This Court, in ***Manoj Krishan Ahuja (supra)***, in addition to stating that cognisance taken on a police report/chargesheet is contrary to the bar under Section 28 of the PCPNDT Act, also held that a subsequent complaint filed by the Appropriate Authority would not validate such a cognisance order. The relevant observations to this effect in the said judgment are as under:

> *"35. In the considered opinion of this Court, since Section 28 of the Act expressly prohibits taking of cognizance by the Courts in absence of a complaint made by Appropriate Authority or any other person authorised on its behalf,* ***the complaint filed subsequently and registered and pending adjudication as per law under the Act cannot come to the rescue of the prosecution, more so since it will amount to prosecuting the same persons for same offences by two procedures prescribed under law i.e. by way of filing of a complaint case which was mandatory under this Act and on the basis of cognizance taken of a chargesheet which is prohibited under the Act.****"*
>
> (emphasis supplied)

12. It is noticed that another Coordinate Bench of this Court, in ***Uravashi Fakay v. State (NCT of Delhi)*****, 2023 SCC OnLine Del 8091**, set aside the cognisance taken on a chargesheet/police report, after not only rejecting the view that the defect was curable by a later complaint but also by holding that a police report and complaint cannot be clubbed together under Sections 202 and 210 of the CrPC. The relevant observations therein are as under:

> *"62.* ***In view of the above and the express provisions of law, the observation made by the learned ASJ in the impugned order dated 02.07.2014 that the aforesaid order dated 11.01.2013 was a curable defect which has been rectified by the complaint filed by respondent no. 2 which was pending in the same Court, is not sustainable in law. The order dated 11.01.2013 taking cognizance is set aside and the petitioners are discharged in the said***

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chargesheet. *At the same time, it is observed that registration of an FIR and subsequent investigation was not barred under the provisions of the Act. In Manoj Krishan Ahuja (supra), it was further held as under: …*

***

68. ***In view of the above, for the purposes of proceedings under Section 210 of the CrPC, so far as clubbing of police report and complaint is concerned, cognizance of an offence of a report under Section 173 of the CrPC is mandatory. Section 210(2) of the CrPC clearly stipulates that the Magistrate shall try together the complaint case and the case arising out of the police report only if the cognizance had been taken by the learned Magistrate on such report. In the present case as pointed out hereinabove, the cognizance could not have been taken in view of the Section 28(1)(a) of the PCPNDT Act and, in absence of any cognizance the clubbing of the police report and the complaint is not permissible under Section 210 of the CrPC****.*

***

72. ***The provisions of Section 202 of the CrPC as stated hereinabove clearly applies to a complaint case and the police report filed in the present case was not in pursuance to an order passed under Section 202 of the CrPC in the complaint case filed on behalf of respondent no. 2. It is also pertinent to observe that provision of clubbing a police report and complaint has been provided for under Section 210 of CrPC and not under Section 202 of the CrPC.*** *The learned ASJ and the learned CMM erred in law by clubbing the police report and complaint case under the provision of Section 202 of the CrPC. At this juncture, reference is made to Nazir Ahmad and The King-Emperor, 1936 SCC OnLine PC 41, wherein the Privy Council was dealing with a case where the appellant was convicted on the strength of a confession said to have been made by him to a Magistrate under the provisions of Section 164 of the CrPC. Oral evidence of the said alleged confession was given by the learned Magistrate but the same was not recorded by him, as required under Section 164 of the CrPC. While dealing with the aforesaid situation, the Privy Council observed and held as under …*

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74. ***In view of the above, the findings of the learned ASJ that the police report filed under Section 173 of the CrPC could be treated as inquiry report under Section 202 of the CrPC and also that the police report and the complaint could be clubbed together under***

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the said Section are not sustainable in law and set aside."

(emphasis supplied)

13. In the circumstances,the impugned order dated 11.03.2025 cannot survive the scrutiny of law.The cognisance, even in the complaint case, was taken on the basis of the police charge sheet, and the trial Court proceeded to treat the mode of cognisance as "*immaterial*". This same ignores the statutory bar prescribed under Section 28 of the PCPNDT Act and the *dicta* laid down in the aforesaid decisions of this Court. In the present case, the later complaint of the Appropriate Authority cannot cure the disregard of the statutory bar at the time of taking cognisance, as the defect goes to the root of the jurisdiction. Accordingly, the impugned order is set aside.

14. Considering that the impugned orders, dated 10.09.2025 and 16.09.2025, concerning the framing of charges, flow from and rest on the impugned order dated 11.03.2025, these orders fall with the impugned order dated 11.03.2025 as well.

15. In the circumstances, the present petitions are allowed, and the impugned orders (dated 11.03.2025, 10.09.2025, and 16.09.2025) are set aside. The learned Judicial Magistrate First Class, West District, Tis Hazari Courts, Delhi, shall consider the complaint, dated 29.11.2024, afresh as a complaint under Section 28 of the PNPCDT Act, in accordance with law. A suitable decision on cognisance shall be taken on the basis of the said complaint. It may be noted that in ***Uravashi Fakay (supra)***, as well (*vide* paragraphs 79 and 80), the complaint case was directed to be considered on its own merits, after quashing of the order taking cognisance on the chargesheet.

16. Accordingly, the petitions are allowed in the above terms. Pending application/s also stand disposed of.

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17. The petitioners seek to urge certain legal lacunae in the complaint filed by the Authorised Authority. It shall be open to the petitioner to take all these pleas before the concerned Court, which shall consider them in accordance with law. This Court has not expressed any opinion as regards thereto.

SACHIN DATTA, J

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