
(2016) 04 CHH CK 0013
In the Chhattisgarh High Court
Case No : Writ Petition C No. 976 of 2016

Amita Kujur

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Medical Termination of Pregnancy Act, 1971 — Section 3(2)

Citation : (2016) 168 AIC 373 : (2016) 3 Civil LJ 888

Hon'ble Judges : Manindra Mohan Shrivastava, J.

Bench : Single Bench

Advocate : Ms. Rajni Soren, Advocate, for the Petitioner; Shri Ramakant Mishra, Dy. A.G, for the Respondents/State

Final Decision : Dismissed

Judgement

Manindra Mohan Shrivastava, J. - This petition has been filed by the petitioner, victim of a rape, for a direction to facilitate termination of her pregnancy, which according to her, is the result of commission of offence of rape on her.

2. On a petition filed before this Court by the petitioner, this Court directed medical examination of the petitioner to find out the gestational age. Pursuant to the direction issued by this Court on 13.4.2016, the petitioner was medically examined by a team of doctors. The case was directed to be listed on 18.4.2016. On 18.4.2016, learned counsel for the State made statement before this Court that the petitioner has been examined by a team of doctors. On this disclosure made, the report was directed to be filed on 18.4.2016 itself and the case was directed to be listed today. That is how the matter has come up for consideration before this Court.

3. Learned counsel for the petitioner argues that the petitioner is a tribal girl from Jashpur district who was abducted and taken to Alwar district of Rajasthan, where she was subjected to rape. After she was recovered, an FIR was lodged in Police Station -Bagicha on 21.3.2016, which was transferred to jurisdictional

Police Station-Kansabel. A copy of the report has been placed on record as Annexure P-1. The petitioner having come to know that she had conceived as a result of rape, she represented to the Collector, Jashpur on 28.3.2016 to facilitate termination of her unwanted pregnancy. A representation was also made to the Superintendent of Police, Jashpur on 28.3.2016 itself. Those representations have been placed on record as Annexure P-2 collectively.

According to the pleadings, on 28.3.2016 itself, Additional Superintendent of Police and In-charge, Anti Human Trafficking Cell, assured immediate follow-up action and it is said that he telephonically instructed the police officers of Police Station-Kansabel to take necessary steps. It is the allegation of the petitioner that despite all steps taken by her informing the State and Police Authorities to facilitate termination of pregnancy and an approach made to Chief Medical and Health Officer, Jashpur, steps were not taken and she was advised to approach Chhattisgarh Institute of Medical Science (CIMS) Bilaspur. When she approached doctors at CIMS, she was informed that she needs to bring the copy of FIR, MLC report and a referral letter from District Hospital, Jashpur. As the State Authority and Police Authority did not facilitate termination of pregnancy, though strongly desired by the petitioner, to prevent herself from severe mental agony of carrying unwanted pregnancy, the petitioner has now knocked the doors of justice by filing this petition.

4. Relying upon the judgment of the Supreme Court in the case of Chandrakant Jayantilal Suthar and Anr. v. State of Gujarat, decided on 28.7.2016 S.L.P (Criminal) No. 6013/2015 ; Suchita Srivastava and Anr. v. Chandigarh Administration,(2009) 9 S.C.C. 1 and order dated 19.2.2016 passed by the High Court of Gujarat in the case of Bhavikaben D/o. Rameshbhai Solanki v. State of Gujarat and Ors., Special Criminal Application (Direction) No. 1155 of 2016 prayer has been made to direct termination of pregnancy applying best interest theory and to prevent the petitioner from further mental agony which is a grave injury to the petitioner. Learned counsel for the petitioner has prayed for issuance of immediate direction in that regard.

5. Learned counsel for the respondents-State submits that as per the direction of this Court, the petitioner was examined on 13.4.2016 by a team of doctors and report has been placed on record.

6. As per the medical examination report dated 13.4.2016 given by a team of two doctors, following opinion has been formed:

"Opinion: According to last menstrual period her gestational age is 20 weeks 4 days with P/A finding of pregnant uterus size 20-22 weeks and as per USG her mean gestational age is 20 weeks 4 days (copy enclosed). Hence according to MTP Act 1971 section 3 sub-section 2 b (copy enclosed), her pregnancy has exceeded the legal limit for MTP i.e. 20 weeks, therefore further direction is anticipated by the Hon"ble High Court, Chhattisgarh for further proceedings"

From the report, it is found that on 13.4.2016, the petitioner was found carrying

pregnancy of more than 20 weeks.

7. At this stage, it is relevant to refer to the legal framework and the law of the land regulating the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as "the Act of 1971"). The circumstances under which pregnancy may be terminated by registered medical practitioners has been provided under Section 3 of the aforesaid Act, which reads as follows:

"3. When pregnancies may be terminated by registered medical practitioners.-(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I. - Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II. - Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a [mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."

The provision, as it reads, allows termination of pregnancy upon formation of opinion in good-faith with regard to circumstances specified in clause (i) and clause (ii) of sub-section (2) of Section 3 of the Act of 1971, quoted herein above.

"Explanation -I provides in no uncertain terms that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman."

8. The petitioner, a victim of rape, has clearly expressed her strong desire to avoid giving birth to child which is a result of rape on her. It has been stated in her pleadings in additional memorandum filed on 18.4.2016 that the petitioner has studied only up to Class-XII and did not go to college because of financial reason. Her mother passed away when she was young, her father is old and infirm. Presently she is financially dependent on her brothers who are married. Thereafter, what has been stated by the petitioner requires special mention and reproduction also as herein-below:

"The petitioner is under a lot of mental pressure and cannot bear stigma of being an unwed mother, she does not want to give birth to a child.

9. The situation which now stands as on today is that though the petitioner is not at all willing to carry pregnancy and seeks termination of her pregnancy so as to put an end to at least an agony of giving birth to an unwanted child, but the period of 20 weeks as provided in the Act has already elapsed. In fact, when the matter came up for consideration before this Court for the first time, the gestational period had crossed 20 weeks. As on today, the period of pregnancy is little more than 21 weeks.

10. The course of action which is required to be taken has to be guided by the principles of best interest theory laid down by the Supreme Court in the case of Suchita Srivastava (supra). In the aforesaid decision, the Supreme Court evolved the test and held that the Court is required to ascertain the course of action which would serve the best interests of the person in question. It has also emphasised that the Court must undertake a careful inquiry of the medical opinion on the feasibility of pregnancy as well as social circumstances faced by the victim. The Court's decision should be guided by the interests of the victim alone and not those of stakeholders such as guardians or society in general. The observation made by the Supreme Court in para-37 of the judgment need attention, which reads thus:

"37. As evident from its literal description, the "best interests" test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in

general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights.

11. A somewhat similar situation arose for consideration before the High Court of Gujarat in the case of Bhavikaben (supra). There the gestational age was of 24 weeks. That was also a case of rape victim. She tried to put an end to her life by consuming acid. She was ailing from medical problem also. Applying the best interest theory propounded by the Supreme Court in the case of Suchita Srivastava (supra) and the direction issued by the Supreme Court in another case of Chandrakant Jayantilal Suthar (supra), directions were issued for termination of medical pregnancy under supervision and care of doctors.

12. In the present case, the pregnancy has crossed 21 weeks of gestational age and unless there is judicial order as has been expressed in the opinion, it may not be possible for the doctors even to proceed with termination of pregnancy.

13. Taking into consideration the totality of the circumstances what has been stated by the victim, gestational age, judicial precedents, that as per Explanation -I appended to Section 3 of the Act of 1971 mental agony of a rape victim has to be treated as a case of grave injury, particularly taking into consideration that it is the interests of the victim alone which has to be kept in view, this Court is inclined to direct the treating doctors to terminate the pregnancy. Taking into consideration that period of 21 weeks has elapsed, in order to ensure the safety of life of the petitioner, it would be proper to direct that the team of five doctors including those who have already conducted medical examination shall consider the feasibility of termination of pregnancy at this gestational age.

In view of the order of the Supreme Court in the case of Chandrakant (supra), it has to be left to the best opinion and judgment of medical experts in the matter. Once they find that at this stage, pregnancy can be terminated looking to the gestational age and overall condition of the petitioner, the same shall be carried out forthwith.

14. A copy of this order shall be supplied to learned counsel for the petitioner and Shri Ramakant Mishra, Dy.A.G., today itself, for immediate onwards transmission to Dean, CIMS, Bilaspur for forthwith and immediate examination as per opinion, termination of pregnancy also .

15. This case is kept pending for the purposes of verifying the well-being of the petitioner after termination of pregnancy or for any other order which may be required to be passed in the matter including appropriate direction to be issued to the State Authority to avoid present situation.

16. The Hospital Authority shall take necessary tissues from fetus for DNA identification.

17. Respondent-State shall submit a report with regard to compliance of the Court direction on the next date of hearing.

18. List this matter on 25th April, 2016.