
(2009) 08 RAJ CK 0014
In the Rajasthan High Court

Jamana Suthar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Medical Termination of Pregnancy Act, 1971 — Section 3, 5
Penal Code, 1860 (IPC) — Section 120B, 363, 366

Citation : (2009) 3 WLN 561

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—Having given a very anxious consideration to this matter, this Court finds itself unable to issue mandamus as prayed for.

2. The petitioner is said to be a minor married girl residing with her father but who was allegedly kidnapped on 02.01.2009 and a report in that regard was lodged by her father at Police Station, Sri Dungargarh where FIR No. 22/2009 was registered for the offences under Sections 363, 366 and 120B IPC. The petitioner's father also filed a Habeas Corpus Petition bearing No. 1311/2009 to this Court alleging inaction on the part of the police authorities in recovering the petitioner from the illegal detention of the accused Shanker Lal. It is borne out from the record that the petitioner was allegedly recovered by the police in the last week of May 2009 from the State of Karnataka and was produced before the Judicial Magistrate and her statements were recorded on 02.06.2009 wherein she alleged kidnapping by three named accused persons and also stated herself having been subjected to rape by the accused continuously leading to pregnancy.

3. It is the case of the petitioner that she submitted an application before the concerned authorities through her father to get rid of the unwanted and illegal pregnancy caused by rape and a copy of such application, said to be dt. 12.06.2009, has been placed on record as Annexure-4. The petitioner has also filed with the additional affidavit the applications said to have been made on

13.06.2009 to the Superintendent of Police, Bikaner in this regard as Annexure-6 and that to the Collector, Bikaner on 08.07.2009 as Annexure-7.

4. This petition was filed only on 13.07.2009 stating that there had been inaction on the part of the respondents in not providing the petitioner the facility of medical termination of pregnancy that amounted to violation of her fundamental right; and it was prayed that by way of mandamus, the respondents be directed to terminate the pregnancy of the petitioner according to the provisions of the Medical Termination of Pregnancy Act, 1971 ("the Act of 1971") without delay and to pay her compensation for inaction of not terminating the pregnancy with immediate effect.

5. This petition was permitted to be placed on the Board on 13.07.2009 itself and notices for final disposal were issued for 17.07.2009. On 17.07.2009, looking to the facts and circumstances, the learned Additional Advocate General was requested to take instructions in the matter and to assist the Court. On 20.07.2009, the learned Additional Advocate General assured that the concerned Medical College at Bikaner would be instructed to extend fullest co-operation to the petitioner and her parents and for that purpose, they could visit the said college next day. The petitioner did visit the medical college on 21.07.2009 and a Board was constituted to examine her. Her sonography was also conducted and the report thereof made out existence of single live foetus of 25 ? 1 week. The Board said,-

As per sonography report No. MLC 07/09 dt. 21.07.2009 single live foetus of 25 ? 1 week. No gross congenital anomaly. Estimated foetal weight = 746 Gm.

6. The Board stated its opinion regarding the proposition of termination of pregnancy thus:

As per MTP Act termination of pregnancy can be done upto 20 weeks of pregnancy. The present case is having pregnancy of 25 ? 1 week duration. So the medical termination of pregnancy is not indicated. Above 20 weeks of pregnancy it can be terminated only on therapeutic consideration for the mother, when continuation of pregnancy will involve a risk to mother's life. In present case there is no condition which could involve risk to mother's life.

7. The matter was taken up for consideration on 22.07.2009 when the Additional Advocate General pointed out that the medical examination of the petitioner had been carried out. The reports were ordered to be placed on record and the matter was taken up on 27.07.2009, the date already fixed; then was ordered to be placed on 29.07.2009; and then on 30.07.2009. Looking to the submissions made on 30.07.2009, this Court, in the first session, passed the following order:

The learned Additional Advocate General Mr. Anand Purohit being not available today in the Court for the personal difficulties, the learned Government Counsel Mr. Sandeep Bhandawat present in the Court was requested to assist.

Having regard to the facts and circumstances of this case, it is considered

appropriate and hence directed that if the petitioner Jamana Suthar appears today before the Chief Judicial Magistrate, Bikaner, her statements be got recorded particularly in regard to the propositions as stated in the writ petition that she wants termination of her pregnancy. After such statements, if she attends the hospital concerned wherein she was examined earlier by the Medical Board under the orders of this Court, her case may specifically be examined by a responsible Medical Officer particularly on her wishes and intentions and so also about the medical opinion if there would be likelihood of any danger to her life in case of carrying out termination of pregnancy at this stage.

It shall be ensured that copies of the report from the Medical Officer as well as the statements reach the Government Counsel and/or the Registry of this Court per fax today itself.

A copy of this order be supplied to the learned Government Counsel Mr. Sandeep Bhandawat; and the learned Deputy Registrar (Judicial) should also take note of the requirements of this order and ensure compliance.

List this matter again in the second session today.

8. In the second session on 30.07.2009 when it was given out that the petitioner could reach Bikaner in the afternoon only and statements were being recorded and further position was not available, the matter was posted next day.

9. In her statement on 30.07.2009, the petitioner stated that she was carrying pregnancy of about six months but was desirous of terminating the same. The petitioner stated,-

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10. On 30.07.2009, however, the Medical Board stated its opinion in the following terms:

(1) There would be likelihood of danger to her life in case of carrying out termination of pregnancy at this stage.

(2) If labour is induced for carrying out termination of pregnancy there are chances of live birth of new born as the maturity of foetus is 26 weeks and estimated foetal weight is 755 gms.

11. This Court, having regard to the circumstances directed on 31.07.2009 thus:

The copies of the statements as given by the petitioner yesterday before the Magistrate concerned and the copy of the reports of the Medical Officers who examined the petitioner yesterday have been received and perused; and the learned Counsel for the parties have been heard at some length.

During the course of submissions, for the serious questions involved in the matter and the aspects of objective views, intention and orientation of the petitioner being hazy, learned Counsel for the parties made and agreed to suggestion that the petitioner be given a couple of days' time to think independently and then her mental and physical condition be examined, on one hand by a Gynecologist and on the another by a qualified Medical Officer, well worsed in the aspects relating to the Psychology before final orders are passed in this matter.

Having regard to the circumstances, it is considered appropriate and hence ordered that the petitioner shall immediately be shifted to the nearest Nari Niketan. The respondent shall ensure that proper arrangements are made for her shifting to the Nari Niketan and so also her look after.

Thereafter on 03.08.2009, the said responsible Medical Officers be sent to such Nari Niketan to examine and so also to confer with the petitioner. Said Medical Officers may be directed to draw out a complete but confidential report and send the same in sealed cover to the learned Additional Advocate General immediately per messenger.

List this matter for further hearing on 04.08.2009 in the supplementary list.

12. The report as stated on 03.08.2009 by the Medical Officers who had examined and conferred with the petitioner in terms of the order passed by this Court says, inter alia, as under:

On examination she is conscious, communicative, oriented to time, place, person. Talks rel/coht. goal directed average built, average intelligent with intact higher mental function. She is mentally fit to understand the present and future condition of herself Pulse 90/minute regular....

13. Though the learned Counsel for the petitioner has made a fervent appeal for issuing directions for permitting the pregnancy of the petitioner to be terminated for the same having been caused against her wishes and because of rape, this Court finds itself unable to grant relief for several reasons and factors. Looking to the background facts and circumstances and pendency of investigation, this Court is not in a position to directly come to the conclusion that it had been a matter of rape. Leaving this aspect aside, and assuming that the pregnancy for whatever reason had been against the wish and desire of the petitioner, the intriguing aspect in the present matter is that by the time the petitioner chose to file this writ petition i.e., on 13.07.2009, the pregnancy had been of about 24 weeks, as is borne out from the medical reports. It does not appear that the petitioner or her parents at the time when she was recovered and made the

statement before the Court and investigating agency in the first week of June 2009 made any suggestion about her desire to have the pregnancy terminated so that her matter could have been considered in terms of Section 3 of the Act of 1971. Then, it is very difficult to find if the petitioner specifically made the representations as alleged on 12/13.06.2009. In any case, it remains entirely inexplicable that this petition was chosen to be filed only on 13.07.2009.

14. The facts repeatedly found from the medical reports are to the effect that at the time of filing of the petition, the petitioner had the pregnancy of about 24 weeks and then, the report dt. 30.07.2009 even states the opinion about likelihood of danger to her life in case of carrying out termination at this stage and so also of the possibility of live birth.

15. The learned Counsel for the petitioner strenuously made the submissions that when read in the context of Explanation 1 to Section 3, where pregnancy caused by rape is said to be of grave injury to the mental health of a pregnant woman, the same aspect must ipso facto ought to have been made applicable to the provisions of Section 5 of the Act of 1971 too whereby the pregnancy could be terminated if required immediately in order to save the life of the pregnant woman. The submissions as made by the learned Counsel attempted at finding incorrectness or invalidity in any of the provisions as contained in the Act of 1971 cannot be countenanced in this writ petition for no such basis having been laid in the petition; and if the vires of the enactment were to be challenged at all, it was required that the petition was framed accordingly to be laid before the appropriate Division Bench.

16. Noteworthy it is that the provisions of the Act of 1971, particularly its Section 3 have been held valid by the Division Bench of this Court in the case of Nand Kishore Sharma and Others Vs. Union of India (UOI) and Another,

17. Though the learned Counsel for the petitioner has attempted to refer to certain decisions in V. Krishnan v. G. Rajan alias Madipu Rajan and the Inspector of Police (Law and Order) 1994 (1) MLW (Criminal)16, Komalavalli v. C.R.Nair and Ors. 1984 Cri.L.J. 446 ; D. Rajeswari Vs. State of Tamil Nadu and others, ; and the orders passed by the Hon'ble Punjab and Haryana High Court in Chandigarh Administration v. Unknown CWP No. 8760/2009 on 09.06.2009 and 17.07.2009; and but none of them could be applied to the petitioner's case in view of the length of the pregnancy and the present medical reports not supporting her case.

18. In the given set of facts and circumstances, this Court is unable to find any legal ground within the frame work of law, particularly in view of the Act of 1971, to grant the relief to the petitioner as prayed for.

19. However, if, on and for the reasons and circumstances as contemplated by Section 5, any opinion is formed in good faith by a registered medical practitioner about necessity of immediate termination of pregnancy, this order shall not be treated to be of any comment in that regard.

20. This order shall also not be of any impediment for any other relief, if claimed and prayed for by the petitioner in accordance with law. It is made clear that in the given circumstances, even the aspect of claim of compensation by the petitioner has not been heard and finally decided by this Court in this petition.

21. In the given situation, however, this Court finds no option except to decline the relief regarding mandamus as prayed for.

22. With the observations aforesaid, this petition stands dismissed.