
(2015) 04 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 538 of 201 5 (O and M)

Kavita

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Medical Termination of Pregnancy Act, 1971 — Section 3, 5, 5(1)

Citation : (2015) 2 RCR(Civil) 688 : (2015) 2 RCR(Criminal) 606

Hon'ble Judges : P.B. Bajanthri, J.;Surya Kant, J.

Bench : Division Bench

Advocate : Pradeep Sharma, for the Appellant; R.D. Sharma, D.A.G, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Surya Kant, J.—This letters patent appeal assails the order dated 31.03.2015 passed by learned Single Judge which indeed unfolds an extremely painful and heart breaking story of a rape victim. The appellant's daughter is a 12 years old minor girl who has been subjected to repeated sexual assaults and is now burdened with pregnancy of about 34 weeks. By the time, the hapless mother came to know about this hideous act, it had already crossed the maximum limitation of 20 weeks prescribed under Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as "the Act"), for lawful termination of an unwanted pregnancy. Since the appellant and her minor daughter (rape victim) both were desirous of getting the involuntary pregnancy terminated, the only recourse could have been under Section 5(1) of the Act, which bids the immediate termination of such a pregnancy if is urgently necessary to save the life of the mother.

2. The learned Single Judge undertook such an exercise. The victim was examined by the Medical Board of Post Graduate Institute of Medical Education and Research (for short, "PGIMER"), Chandigarh on 26.03.2015, who opined that at that particular time, there was no imminent danger to the life of the victim if

the pregnancy was to continue.

3. When this appeal came up for preliminary hearing before us on 06.04.2015, we were informed that physical and mental health of the victim has deteriorated. We, thus, directed the PGIMER authorities to constitute another Medical Board preferably comprising five subject-specialists from different streams to independently re-examine the victim.

4. The PGIMER authorities have promptly complied with that order and a Medical Board consisting seven senior subject-experts of PGIMER, Chandigarh, re-examined the victim on 07.04.2015 at 12.00 noon and have opined as follows:-

"...The records of the patient _____ (victim) were reviewed. The patient was examined in the presence of her mother Kavita. An ultrasound was performed.

On examination, the patient was found to be mildly anemic and had normal blood pressure. The gestation of pregnancy is about 34 weeks. Ultrasound shows a healthy live fetus of around 33 weeks with estimated baby weight of 1.98 kg.

A psychiatric consultation was taken to assess the mental health of _____ (victim). A psychiatric and psychological assessment has been initiated.

Interpretation: Each pregnancy poses a risk to the health of a woman. In this case, the risk of pregnancy is higher because of the age of the girl. However, termination of pregnancy at this period of gestation carries a higher risk to the girl than allowing the pregnancy to continue with regular pregnancy check up in Gynae OPD at weekly intervals.

It needs to be emphasized that termination of pregnancy at this period of gestation is likely to result in the birth of a live baby. The Board is of the opinion that termination of pregnancy now is not necessary and may be rather more harmful to the life of the girl.

However, psychological assessment of the child requires time owing to the sensitive nature of the issue and her age. The child is needed to come for further psychiatric evaluation and counseling, if necessary (Room No. 210, Psychiatry OPD, Level-II, New OPD Block, PGIMER, Chandigarh)....."

5. Having regard to the above reproduced medical opinion, nothing is left to our discretion exercisable under Section 5 or any other provisions of the Act.

6. Faced with this, learned counsel for the appellant submits and very aptly that the Medical Board has viewed that the victim child, owing to the sensitive nature of the issue and her age, requires periodical medical check-up and supervision to prevent any harm to her own life. He, thus, rightly contends that interventions of this Court for the safety of victim's life are certainly called for. We are in outrightly agreement with the learned counsel, hence, dispose of this appeal with the following directions:-

(i) The Director, PGIMER, Chandigarh, would admit the victim as an indoor

patient as and when she is taken for this purpose by the appellant.

(ii) The Director, PGIMER, Chandigarh shall provide a private room to the victim and her mother or any other family-member who is the attendant of victim in the private ward.

(iii) It shall be the duty of the authorities of the PGIMER, Chandigarh to provide all the requisite medicines, food, clothing and other facilities as are required to be made available to the victim or her attendant, well in advance.

(iv) We request Dr. Vanita Jain, Professor, Department of Obst. and Gynaecology, to personally monitor such requirements. The Medical Superintendent, PGIMER, shall be obligated to ensure meticulously compliance of every advice, recommendation, suggestion or order of Dr. Vanita Jain, in this regard.

(v) Dr. Vanita Jain would further supervise the periodical needs like psychiatric consultation or related assistance from other departments of PGIMER which shall also be provided timely.

(vi) The expenditure incurred so far by the appellant on the medical examinations of the victim by the Medical Boards constituted by the PGIMER under the orders of this Court, shall be reimbursed to her by the State of Haryana forthwith but not later than two weeks from the date of submission of the bills.

(vii) The PGIMER authorities shall be entitled to seek reimbursement of their entire expenditure including the room charges etc. etc., from the State of Haryana.

(viii) The Chief Secretary to the State of Haryana, Principal Secretary, Department of Health and all other concerned departments of State of Haryana are directed to ensure the reimbursement of bills or expenditure incurred on the victim by PGIMER, Chandigarh, within a period of two weeks of submission of such bills.

(ix) The PGIMER authorities shall ensure that adequate privacy is provided to the victim and her family while she is an indoor patient and the identity of victim is not disclosed. She shall be kept as an indoor patient without permitting the general public including Media etc. to have any access to her.

(x) With a view to meet with the unforeseen expenses including frequent traveling which the appellant may have to undertake for pursuing the Court case of her husband who is lodged in Jail in some criminal case, and to look-after the victim as well, we direct the State of Haryana to release Rs. 2.0 lacs to the appellant as an interim aid within a period of two weeks from the date of receiving a copy of this order. The said amount shall not be set off against any compensation or other relief to which the victim or her mother/family are found entitle to under any Welfare Scheme of the State or the Central Government.

(xi) The appellant shall always be at liberty to approach this Court for further

directions, if need be.

7. We place on record our appreciation to the PGIMER authorities including the members of Medical Board who have done the needful without losing any time.

8. The appeal stands disposed of accordingly.

9. The report of the Medical Board is ordered to be resealed after incorporating the details in this order and the Registrar Judicial is directed to keep the same in safe custody.

10. Let a copy of this order be handed-over to Mr. R.D. Sharma, learned Deputy Advocate General, Haryana, for information and necessary compliance.