(2019) 01 P&H CK 0181

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1088 Of 2019 (O&M)

Kulwinder Kaur & Another — APPELLANT

Vs

U.T. Chandigarh & Others — RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:
Medical Termination and Pregnancy Act, 1971 — Section 3, 3(2)(b)(ii)
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 P&H CK 0181

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Mrigank Sharma, Ravi Kamal Gupta, Nimrata Shergil, Vikrant Sharma

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J

Petitioners, Kulwinder Kaur, aged 27 years and Harpreet Singh, aged 33 years are husband and wife. Instant petition has been filed under Article 226 of the Constitution of India seeking directions to the respondent/ authorities to allow petitioner No.1 to undergo medical termination of her pregnancy. Basis of raising such a prayer is that the foetus has been diagnosed with a serious heart condition called 'Hypoplastic Left Heart Syndrome' (in short H.L.H.S.).

It has been averred that the date of onset of pregnancy was 16.08.2018. On 07.01.2019, petitioner No.1 went for a routine Level-II Foetal Morphology Scanning and in the report, an Impression was recorded to the following effect:

"Single live foetus of 19-20 weeks of gestation showing mitral atresia with aortic stenosis."

Petitioners were informed that there are certain complications with the heart of the foetus and as such, further investigation would be required. Petitioner No.1 then underwent Foetal Echocardiography on the same date i.e. 07.01.2019 at the

Prime Diagnostic Centre and Heart Institute, Sector-24, Chandigarh. In the report dated 07.01.2019 appended as Annexure P-5 along with the instant petition, apart from other findings, the following were recorded:

"ATRIA

The right atrium is normal size

The left atrium is normal size

EOSSA ovalis bulges to the right and has non-restrictive L>R flow.

ATRIOVENTRICULAR VALVES

MITRAL VALVE

Atretic with minimal flow.

Mild Mitral Regurgitation.

VENTRICLES

Normal right ventricle structure and size

Left Ventricle is dilated, hypocontractile and has fibroelastosis.

No ventricular septal defect

There is no echogenic focus

PULMONARY ARTERY & VALVE

Pulmonary valse is thin, open well.

There is no pulmonary regurgitation.

AORTIC VALVE & AORTA

Atretic with reduced forward flow.

There is no aortic regurgitation.

THREE VESSEL VIEW

On three vessel view, there is retrograde flow in aorta.

HAEMOGYNAMICS

Normal RV systolic functions. LV is severally hypokinetic.

Normal RV inflow velocities

Pulmonary valve velocity 67 cm/sec.

Aortic valve velocity 200 cm/sec."

Based on the afore noticed findings, the Impression recorded was that the foetus is suffering from 'Hypoplastic Left Heart Syndrome'.

Counsel submits that the petitioners immediately rushed to PGIMER, Chandigarh along with the reports. Copy of the OPD Card dated 09.01.2019 is appended as Annexure P-6. Counsel asserts that the Doctors in

PGI after examining the reports came to the same prognosis that the foetus was suffering from H.L.H.S. Petitioners were apprised that in case the foetus is not aborted and the baby is delivered, multiple heart surgeries may have to be undergone at birth and there may also be a requirement of a complete heart transplant in infancy itself. Since the pregnancy was more than 20 weeks, the doctors expressed their inability for conducting medical termination of pregnancy in view of Section 3 of the Medical Termination and Pregnancy Act, 1971.

Resultantly, the instant writ petition.

On 24.01.2019, the following order was passed by this Court:

"Learned counsel representing respondents no.1, 2 and 4 inform the Court that a Permanent Medical Board relating to medical termination of pregnancy beyond 20 weeks is already in place and approved by the Director, P.G.I.M.E.R, Chandigarh. It is further submitted that a communication dated 23.1.2019 already stands addressed from the office of the Director, Health and Family Welfare, U.T. Chandigarh to the Director, P.G.I.M.E.R, Chandigarh calling upon petitioner no.1 Kulwinder Kaur to be examined by the Permanent Medical Board keeping in view the urgency.

In view of the above, hearing in the instant petition is deferred to 30.1.2019.

In the meantime, it is directed that petitioner no.1 herein would be examined by the Permanent Medical Board on 28.1.2019 at 11 A.M and to furnish opinion as regards termination or continuation of pregnancy and its impact on the health of the petitioner mother as well as foetal condition/foetal health.

A copy of this order be furnished to learned counsel for the parties under the signatures of Bench Secretary for necessary compliance.

Learned counsel representing respondent no.3 would furnish a report/opinion of the Medical Board in a sealed cover on the adjourned date."

When the matter was taken up for hearing on 30.01.2019, counsel representing respondent No.3/PGIMER, Chandigarh furnished in a sealed cover a report of the Medical Board. The same was opened, perused and taken on record as mark 'A'.

As per report dated NIL, petitioner No.1 was examined by the Permanent Medical Board on 25.01.2019. Following were the members of the Permanent Medical Board:

1. Prof. Rashmi Bagga, Chairperson.

2. Dr. Tulika, Member

3. Dr. Ruchita Shah, Member

4. Dr. Anu Priya Kaur, Member

5. Dr. Himanshu Gupta, Member

6. Dr. Aastha Takkar, Member

7. Dr. K.T. Prasad, Member

8. Prof. Y.S. Bansal, Member

9. Prof. Bhavneet Bharti, Member

10. Dr. Ranjana Singh, Convener.

As per report of the Permanent Medical Board, petitioner No.1 was found to be carrying a pregnancy of 23 weeks+1 day as on 25.01.2019. Observations made by the Permanent Medical Board were to the following effect:

"1. The patient has been examined by the Permanent Medical Board on 25.01.2019. She is found to be carrying a pregnancy of 23 weeks+1 day.

2. The fetus has serious congenital heart malformation which is not compatible with normal life and medical termination of pregnancy is recommended when the fetus has such type of congenital malformation.

3. The continuation of pregnancy is likely to result in severe mental agony and stress to the mother."

Section 3 of the Medical Termination of Pregnancy Act, 1971 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 1.-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 2.-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 a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable 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 4 [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."

In the considered view of this Court, the case of the petitioners would fall under Section 3(2)(b)(ii) but for the time period embargo of 20 weeks. The clear opinion given by the medical experts is that the foetus is suffering from "Hypoplastsic Left Heart Syndrome." Counsel has asserted that in layman terminology such condition indicates that the left side of the heart of the foetus has not developed. Placed on record at Annexure P-8 is an Article authored by Deborah S. Fruitman, Bsc, Faculty of Medicine, Dalhousie University, Halifax Nova Scotia on the topic of 'Hypoplastic Left

Heart Syndrome:Prognosis and Management Options' and it has been observed that prior to 1980's, such complex heart condition/malformation was associated with 95% mortality within the first month of life. Untreated, the prognosis in the infant is certain death. With the advancement of medical science/treatment, palliative surgery and cardiac transplantation have become management options for such heart condition. A statistical finding in relation to Canada and United States has been recorded that the incidence of H.L.H.S. is low in the neonatal population even though it has a very high mortality rate and is responsible for approximately 23% of neonatal deaths.

In the circumstances of the present case, it would be difficult for this Court to refuse the permission to petitioner No.1 to undergo medical termination of pregnancy. The medical and expert opinion clearly indicates that the foetus if allowed to born would have grim chances of survival and a limited life span. A heart transplant at the stage of infancy itself may be required. There would be no basis for this Court not to accept the recommendations made by the Permanent Medical Board and the constitution of which was approved by the Director, PGIMER, Chandigarh.

In taking such a view, this Court would draw support from the judgment of the Hon'ble Supreme Court in Tapasya Umesh Pisal Vs. Union of India & others, (2018) 12 (SCC) 57, wherein also a prayer for medical termination of pregnancy had been allowed in the 24th week of pregnancy and the foetus having been diagnosed with a heart ailment called

'Tricuspid and Pulmonary Atresia'. Even a Coordinate Bench of this Court in Parmjeet Kaur & another Vs. State of Punjab & another (CWP-2181-2018, decided on 07.02.2018) had permitted medical termination of pregnancy in the 24th week in a case where the foetus was diagnosed to be suffering from a 'Neurological Disorder'.

For the reasons recorded above, the writ petition is allowed. The Director, PGIMER, Chandigarh is requested to get the pregnancy of petitioner No.1, Kulwinder Kaur terminated under the supervision of the Head of the Department (Obstetrics and Gynecology), PGIMER, Chandigarh.

A copy of this order be given to learned counsel for the parties under the signatures of the Bench Secretary to ensure necessary and immediate compliance.

