

(2019) 12 CHH CK 0155
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 4337 Of 2019

Minor X D/O Santosh Kumar Thakur	APPELLANT
Vs	
State Of Chhattisgarh Through Its Secretary And Ors	RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 21
Medical Termination Of Pregnancy Act, 1971 — Section 3, 4(a), 5
Indian Penal Code, 1860 — Section 376
Protection Of Children From Sexual Offences Act, 2012 — Section 6

Citation : (2019) 12 CHH CK 0155

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Krishna Kumar Dewangan, V.R. Tiwari, Sunita Jain

Final Decision : Disposed Of

Judgement

1. This Court vide previous order dated 29.11.2019 had asked the Chief Medical Officer, Jagdalpur (respondent No.3) to submit a report so far as the health condition of the petitioner is concerned.
2. State has filed the report of the Medical Officer (Annexure D/1), wherein the respondent No.3 has given his report suggesting termination of pregnancy for the petitioner.
3. The facts in brief is that the petitioner a minor girl was allured by an accused Swapnil Ekka and was subjected to rape. An offence under Section 376 of Indian Penal Code and also an offence under Section 6 of the Protection of Children from the Sexual Offences Act has been registered against the accused Swapnil Ekka. As a result of the petitioner being subjected to rape, she has got conceived and as of now is pregnant of 23 weeks and 2 days as on 29.11.2019. The petitioner has approached this Court seeking for termination of the pregnancy.

4. The petitioner has relied upon an order passed by this Court on 27.08.2019 passed in WPC No. 2869/2019 and also in WPC No. 3674/2019 in support of her contention.

5. The State counsel as has been held earlier on the previous date directed to get the medical opinion so far as the health condition of the petitioner is concerned and the respondent No.3 has submitted their report showing that the petitioner can be permitted to termination of pregnancy.

6. It would be relevant at this juncture to refer to paragraph Nos. 6 to 9 of the judgment passed in WPC No. 2869/2019 on 27.08.2019, which are as under:-

"6. The Supreme Court in the case of Meera Santosh Pal & others Versus Union of India and others {(2017) 3 SCC 462} has reiterated the view taken in the case of Suchita Srivastava Vs. Chandigarh Admn {(2009) 9 SCC 1} and has observed thus in para 9, which is reproduced hereunder:-

"9. In Suchita Srivastava v. Chandigarh Admn {(2009) 9 SCC 1} a Bench of three Judges held "a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution". The Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. The Court observed as follows :-

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children."

7. Reading of section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act of 1971') makes it clear that where length of pregnancy does not exceed 20 weeks and not less than two registered medical practitioners have formed an opinion in good faith that the continuance of pregnancy would involve a risk to the life of pregnant woman or grave injury to her physical or mental health, the pregnancy can be terminated by a registered medical practitioner. This act of medical practitioner, if aforesaid conditions are satisfied, will not attract the penal provisions mentioned in Indian Penal Code. In other words, such registered medical practitioner shall not be guilty of any offence under the IPC or under any other law for the time being in force if conditions mentioned in Section 3 or Section 5 of the Act are satisfied.

8. Explanation 1 of the Act of 1971 purports that when 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. Sub section 4(a) of section 3 further contemplates that no pregnancy of a woman, who has not attained the age of eighteen years, for termination of the pregnancy consent has to be obtained in writing from her guardian.

9. The instant petition has been preferred by the mother of the victim being her natural guardian and the victim has also been made petitioner No.1 and the report which is called from the team of the two medical practitioner of Civil Surgeon, Main Hospital, Mahasamund shows that the patient is fit to undergo termination of pregnancy and the pregnancy is of 17 weeks 01 days."

7. Based on the aforesaid findings, the Coordinate Bench of this Court had allowed the writ petition and permitted the petitioner for terminating the pregnancy.

8. In this regard, the Supreme Court in "Suchita Srivastava and another v. Chandigarh Administration" [(2009) 9 SCC 1] has laid down the guidelines based on the principle of "best interests" theory and held that the Court is required to ascertain the course of action which would serve the best interests of the person in question. Paragraphs 36 and 37 of the report are relevant and are extracted herein-below: -

"36. Courts in other common law jurisdictions have developed two distinct standards while exercising "parens patriae" jurisdiction for the purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the "best interests" test and the "substituted judgment" test.

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."

9. The Supreme Court in the matter of "X v. Union of India and others" [(2016) 14 SCC 382] has clearly held that termination of pregnancy after 20 weeks to save life of pregnant woman (an alleged rape victim) in case of grave danger to physical and mental health of the said woman, is permissible, and observed as under: -

"13. Having perused the medical report (relevant extracts whereof have been

reproduced hereinabove), we are satisfied that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy."

10. Similar proposition has been laid down recently by the Supreme Court in the matter of "X and others v. Union of India and others" [(2017) 3 SCC 458] and also in the matter of Meera Santosh Pal and others v. Union of India and others [(2017) 3 SCC 462].

11. In a more recent decision, Their Lordships of the Supreme Court in the matter of Tapasya Umesh Pisal v. Union of India and others [AIR 2017 SC 3931] have permitted termination of pregnancy of a woman, aged 24 years, in her 24th week of pregnancy wherein the Medical Board opined that baby if delivered would have to undergo several surgeries associated with high morbidity and mortality, and thus, granted permission.

12. Similarly, in the matter of Mrs. A v. Union of India and others [AIR 2017 SC 4037], the Supreme Court has granted permission for termination of pregnancy of a woman, aged 22 years, in her 25th to 26th weeks of pregnancy holding that continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy. Their Lordships held as under: -

"6. Upon evaluation of the petitioner, the aforesaid Medical Board has concluded that her current pregnancy is of 25 to 26 weeks. The condition of the fetus is not compatible with life. The medical evidence clearly suggests that there is no point in allowing the pregnancy to run its full course since the fetus would not be able to survive outside the uterus without a skull.

7. Importantly, it is reported that the continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy."

13. In light of the aforesaid judicial pronouncement referred to in the preceding paragraphs, if we look into the medical report, which has been submitted by the team of Doctors, which had medically examined the petitioner, given the following report, so far as the general examination is concerned:

"General Examination

Conscious and well oriented.

Height-

155 CM

Weight-

52 KG

Nutritional status average, pallor + No pedal edema, No icterus, No Lymphadenopathy. BP- 104/68 mm Hg, Pulse Rate 84/min. Respiration rate 18/min. Temp 96.80 f."

14. Likewise, on the investigation part, the committee found the following results:

"Investigation

CBC-HB 9.2gm, WBC-9900/cum RBC-3470/cum, Platelet Count-1.5 Lack, Blood Group- A+ve, BT-2'15 sec. CT-4'58 sec.

HBs Ag-Non Reactive, HIV-Non Reactive, VDRL-Non Reactive, Blood Sugar-68mg/dl, Sick cell Trait Urine R/E-Alb nil. Sugar nil, P/c 0-2, E/c 4-6, RBC-Nil, Crystal-Nil, Casts-Nil."

15. Thereafter, the team of Doctors have also made the following observations:

"According to above clinical examination we conclude that Vishakha is having pregnancy by rape so continuation of pregnancy may be harmful for her mental & physical health so on ethical ground pregnancy should be terminate in Medical College level hospital by team of Doctors to minimize the complications and morbidity as she is 16 years of age with advance pregnancy and Sick Cell Trait."

16. In view of the specific report given by the team of having found Sick Cell Trait, the committee has recommended for the termination of the pregnancy as it could be harmful both mental as well as physical health of the petitioner. The committee has also advised that the petitioner undergoes her termination of pregnancy at the Medical College level hospital considering her medical report.

17. In view of the aforesaid specific report of the team of Doctors and also taking into consideration the judgments laid down by the Hon'ble Supreme Court on this issue, this Court is also inclined to allow the present writ petition by permitting the petitioner to undergo with the termination of her pregnancy.

18. Accordingly, the petitioner is permitted to approach the Medical College Hospital at Jagdalpur, where the Medical Superintendent of the Medical College Hospital, Jagdalpur shall ensure that the petitioner is subjected to termination of pregnancy after completing all the requisite formalities for the same and the Medical Superintendent of Medical College, Jagdalpur is directed to ensure that the petitioner is subjected to medical termination under the supervision of two of the senior most Doctors in the Department of Gynecology. The Medical Superintendent shall also ensure that the DNA sample of the fetus shall also be taken and preserved for further evidence as the criminal case against the

accused is still pending. Let this exercise be carried without any further delay.

19. The petitioner is directed to appear before the Medical Superintendent of Medical College, Jagdalpur on the 6th of December, 2012 for this purpose. The Additional Advocate General is also directed to intimate the Medical College authorities at Jagdalpur in respect of the order passed by this Court.

20. With the aforesaid observations, the present writ petition stands allowed and disposed of.

21. Certified copy today.