

(2020) 03 CHH CK 0115
In the Chhattisgarh High Court
Case No : WPC No. 839 Of 2020

Ms. K D/o Rajeshdas Manikpur And Ors	APPELLANT
Vs	
State Of Chhattisgarh	RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Medical Termination Of Pregnancy Act, 1971 — Section 3
Constitution Of India, 1950 — Article 21

Citation : (2020) 03 CHH CK 0115

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Pramod Shrivastava, Sunita Jain

Final Decision : Allowed/Disposed Of

Judgement

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P. Sam Koshy, J

1. This Court vide previous order dated 04.03.2020 had asked the respondent No.2 to submit a report so far as the health condition of the petitioner No.1 is concerned.
2. State counsel has submitted a report of the Medical Officer, where the respondent No.2 has given a report that the termination of pregnancy can be carried out on petitioner No.1.
3. The facts in brief is that the petitioner No.1 a minor girl was allured by an accused Prakash Banchhor and was subjected to rape. Initially a missing report was lodged and an offence of abduction and rape has been registered against the accused Prakash Banchhor. As a result of the petitioner No.1 being subjected to rape, she has got conceived and as of now is pregnant of 17 weeks and 3 days as on 05.03.2020. The petitioner No.1 has approached this Court seeking for termination of the pregnancy.

4. The petitioners have relied upon an order passed by this Court in WPC No. 2869/2019, decided on 27.08.2019 and WPC No. 3674/2019, decided on 23.10.2019 in support of their contentions.

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 No.1 is concerned and the respondent No.2 has submitted their report showing that the petitioner No.1 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 day."

7. Based on the aforesaid findings, the Coordinate Bench of this Court had allowed the writ petition and permitted the petitioner No.1 for terminating the pregnancy.

8. Bare perusal of the facts that the present case would show that the said judgment of this Court in WPC No. 2869/2019 is on similar footing and the condition of the petitioner therein and the petitioner No.1 herein also are almost similar.

9. In view of the aforesaid facts and circumstances of the case and also taking note of the decision of this Court rendered in WPC No. 2869/2019 decided on 27.08.2019, this Court is also inclined to take the same stand and allow the present writ petition permitting the petitioner No.1 to undergo with the termination of her pregnancy.

10. Accordingly, it is directed that let the petitioner No.1 approach the respondent No.2 on 7th of March, 2020 itself and subsequently the respondent No.2 in turn shall ensure that the petitioner No.1 is subjected to medical termination under the supervision of two registered medical practitioners preferably two senior Doctors available in the said district after obtaining due consent of the petitioner No.1 as well as her guardian. Accordingly, it is directed that the petitioner No.1, who, it is informed, has already been admitted to the District Hospital, Mahasamund shall be subjected to medical termination of pregnancy under the supervision of the respondent No.2 and the team of Doctors, who have examined the petitioner No.1 on 05.03.2020, tomorrow i.e. on 7th of March, 2020 itself. While undertaking the same, the respondent No.2 is directed to obtain all necessary consent and documentation part, which is otherwise required including the consent letter of the petitioner No.1 and the guardian of the petitioner No.1 from the same. 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.

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

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