
(2018) 07 UK CK 0080
In the Uttarakhand High Court
Case No : Writ Petition (M/S) No.1909 of 2018

Ms. X	Vs	APPELLANT
State of Uttarakhand and others		RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Medical Termination of Pregnancy Act, 1971 — Section 3, 4, 5, 5(1)

Citation : (2018) 07 UK CK 0080

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : Pankaj Sharma, Yogesh Pandey

Final Decision : Dismissed

Judgement

SUDHANSHU DHULIA, J. (ORAL)

1. The petitioner who is a 16 years old girl has filed the present writ petition before this Court with the following prayers:-

â??(i). Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 2 and 3 to medically terminate the pregnancy of the

petitioner and provide adequate medical facility in view of the age, health and future of the petitioner.

(ii). Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 2 and 3 to treat the petitionerâ??s case as special case

and waive of the statutory limit of 20 weeks under the M.T.P. for the termination of the pregnancy of the petitioner.

(iii). Issue a writ, order or direction in the nature of mandamus directing the respondents to pay compensation of Rs.10 Lacs to the petitioner.â??

2. It is alleged in this writ petition that an FIR was lodged by the petitionerâ??s mother on 25.04.2018. According to the FIR, the petitioner was

kidnapped by one Rihan. Thereafter on 26.05.2018, the petitioner was recovered and was medically examined. At this stage, there was no indication

in the medical report that she was pregnant. The petitioner has filed the present writ petition saying that later when she was medically examined on

25.06.2018, the period of her pregnancy was 21 weeks and 3 days. At this stage, she wanted to terminate the same, on which she had the consent of

her mother, yet the doctors refused to terminate the pregnancy, and therefore she filed the writ petition before this Court for the above relief.

3. This matter had first come before this Court on 6.07.2018 where a learned Single Judge of this Court had passed the following order:-

â??Mr. Pankaj Sharma, Advocate for the petitioner.

Mr. Yogesh Pandey, Dy. A.G. for the State.

Heard.

Today, when the matter is taken up, learned Dy. A.G. makes a request that the matter be taken up at 2.00 P.M. to enable him to seek instructions in

the matter. On his request, the matter is posted in the post lunch session. When, the matter is taken up in the post lunch session, learned Dy. A.G.

informs the Court that the Chief Medical Officer, Nainital has expressed her willingness to constitute a Medical Board consisting of not less than three

members, including two Senior Gynecologists, who will examine the petitioner in terms of Section 5 (1) of Medical Termination of Pregnancy Act,

1971 (hereinafter referred to as â??Actâ??).

In view of the statement made by learned Dy. A.G., petitioner is directed to appear before the Medical Board constituted in B.D. Pande (Female)

Hospital, Naintial on 07.07.2018 at 12.30 P.M.

The Medical Board shall assess the medical condition of the petitioner in the light of Section 5(1) of the aforesaid act and submit its report. The

Medical Board shall also assess the medical condition of the foetus and the age of the petitioner.

The report of the Medical Board shall be produced before this Court in sealed cover, on or before the next date of listing.

List this matter on 11.07.2018.

In the meantime, learned counsel for the respondents may file counter affidavit.

Learned counsel for the petitioner orally prayed that petitionerâ??s name and

identity may not be disclosed at any stage of these proceedings, as it may adversely affect her future.

Having regard to the facts and circumstances of the case, the oral prayer made by learned counsel for the petitioner is allowed.

Registry is directed to re-register the writ petition in the name of Ms. X Vs. State of Uttarakhand and others.

Let certified copy of this order be supplied to learned counsel for the parties, today itself on payment of usual charges.

4. Thereafter a team of three doctors examined the petitioner on 07.07.2018. The medical report of the Medical Board reads as under:-

Gynaecological Report " As per history and abdominal examination the average age of fetus is about 20 22 weeks.

LMP " 19-02-2018

EDD " 26-11-2018

Weight " 46 Kg

P/A FH " 20-22 weeks EB present

Investigations " awaited.

Unimmunized.

Radiological Report-

Foetal Movements - Normal

Cardiac Activity - Normal

Amoniotic Fluid - Adequate

Congenital anomalies " NIL

Placenta - Anterior

Presentation " Breech

FHR " 146

BPD " 52.3 MM 21 Weeks 0 days +/- 3.0

FL - 40.6 MM 22 Weeks 0 days +/- 3.0

HC - 201.2 MM 22 Weeks 0 days +/-10.0

AC - 177.2 MM 22 Weeks 03 days +/- 13.4

EFW - 529 Gm

Age 22 weeks 02 days +/- 01 weeks 06 days SLIU Foetus with breech presentation with AGA 22 weeks 02 days.

Opinion " As per Gynaecological report and ultrasonic report there is a single live intra uterine fetus with breech presentation with average

gestational age 22 weeks 02 days, seen."

5. The matter came up before this Court on 11.07.2018. After the perusal of the report, referred above, this Court was of the opinion that the Medical

Board had not expressed any opinion as to the medical condition of the petitioner in terms of Section 5(1) of the Medical Termination and Pregnancy

Act, 1971, therefore, the matter was again sent to the Medical Board for examination of the matter in the light of the above provision and the Medical

Board was directed to assign opinion as to the present medical condition of the petitioner and the matter was fixed for 13.07.2018. It is now today i.e.

on 17.07.2018, the report of the Medical Board dated 13.07.2018 which is of five registered Medical Practitioners has been filed before this Court,

which reads as under:-

"Mark of Identification : - A black old healed scar mark present on the forehead

Gynecological report- As per history and obstetrical examination

LMP- 19-02-2018

EDD- 26-11-2018

Weight- 46 kg

Height- 5'3"

B.P.- 110/70

History of amenorrhea- 05 months

Per abdomen- fundal height 22-24 weeks.

FHS present.

Tetanus Toxoid (TT) uncovered.

Ultrasound report-SLIU foetus with breech presentation with AGA 22 weeks 02 days with EFW-529 gms (on dated: 07-07-2018)

PHYSICIAN OPINION- At present no gross physical illness seen except anemia and ECG within normal limit.

PSYCHIATRIST OPINION- At present patient is mentally fit no psychiatrist illness or co-morbidity found. No personality disorder noted at present.

According to the examination and investigation Ms. X is diagnosed as 22-24 weeks normal intra uterine pregnancy with mild anemia.

According to Medical termination of Pregnancy Act, 1971 the age of the foetus for termination of pregnancy is up to 20 weeks. At present foetus of

Ms. X has achieved the age of viability and normal with no congenital anomalies. So, termination of pregnancy is not recommended.

OPINION- At present with our best opinion there is no substantial risk of the child being born with serious physical and mental abnormalities and

there is no threat to the life of Ms. X on continuing the pregnancy till term. So termination of pregnancy is not recommended.â??

6. This matter is governed under the provisions of the Medical Termination of Pregnancy Act, 1971. Section 3 of the Medical Termination of

Pregnancy Act, 1971 reads as under:-

â??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 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 I.- 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 II.- 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 pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account

may be taken of the pregnant woman's actual or reasonably 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 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.

7. Section 4 of the Medical Termination of Pregnancy Act, 1971 prescribes the place where pregnancy may be terminated. Section 4 of the Medical

Termination of Pregnancy Act, 1971 reads as under:-

4. Place where pregnancy may be terminated.- No termination of pregnancy shall be made in accordance with this Act at any place other than-

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with

the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the

Government may specify from time to time.

8. Undoubtedly Section 5 of the Medical Termination of Pregnancy Act, 1971 creates certain exceptions where pregnancy can be terminated and

where Section 3 and Section 4 of the Medical Termination of Pregnancy Act, 1971 would not apply. Section 5 of the Medical Termination of

Pregnancy Act, 1971 reads as under:-

5. Section 3 and 4 when not to apply. - (1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as relate to

the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a

registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in Section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.- For the purposes of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.- For the purposes of this section, so much of the provisions of clause (d) of Section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.

9. A bare perusal of the above exception created in sub-section (1) of Section 5 of the Medical Termination of Pregnancy Act, 1971 shows that neither the length of the pregnancy nor the opinion of not less than two registered medical practitioners is required when the termination of pregnancy "is immediately necessary to save the life of the pregnant woman".

10. On 07.07.2018, the pregnancy of the petitioner was 22 weeks and 02 days. Today it would be more than 23 weeks. The medical termination of pregnancy after 20 weeks is only permissible when it is immediately necessary to save the life of the pregnant woman.

11. Even as per the averments in the writ petition, while the petitioner was in custody of her mother she was taken to a Gynaecologist who had

advised a sonography test, when it was discovered on 25.06.2018 that petitioner has a foetus of 21 weeks and 03 days. Consequently, the Medical

Practitioner refused to terminate the pregnancy. The first medical report filed by the petitioner is of 25.06.2018 of one Dr. Reena Singhal, M.B.B.S.,

D.G.O., Ramnagar, District Nainital which says that on examination it is being found that the petitioner has a pregnancy of 21 weeks and 03 days. It

was then that she filed this writ petition primarily with a prayer that a mandamus be issued to the respondents to medically terminate her pregnancy

with adequate medical care.

12. The learned State Counsel Mr. Yogesh Pandey, on the other hand, would contend that there is no laxity on the part of the State Authorities as the

first medical examination of the petitioner is of 25.06.2018 which shows that at the time when pregnancy was established, petitioner was 21 weeks

and 03 days pregnant. The learned State Counsel would also argue that the petitioner did not conceive at the time when she was with Rihan who is

alleged to have kidnapped the petitioner. As per her own medical report, she had conceived prior to that.

13. Be that as it may, the fact of the matter is that the petitioner is undoubtedly in an unfortunate situation and is a victim. This case also cannot be

taken as an adversarial litigation with blame games on both sides. The factors which have to be examined are first and foremost the best interest of

the petitioner. Although the petitioner is 16 years of age and she has shown her willingness to terminate the pregnancy and since an affidavit has been

sworn by her mother in the capacity of Pairokar, it will be presumed also that this decision of the petitioner has a consent and approval of her mother,

yet the right which the petitioner exerts comes with certain restrictions which have been imposed under the law i.e. the Medical Termination of

Pregnancy Act, 1971. Admittedly, when the petitioner approached this Court, she was having more than 20 weeks's pregnancy and as of now

virtually she is at the end of her second trimester. The law does not permit medical termination of pregnancy at this stage, particularly under the facts

and circumstances of the case where the medical opinion of five registered medical practitioners is that there is no substantial risk of the child being

born with serious physical and mental abnormalities and there is no threat to the life of Ms. X on continuing the pregnancy till term and the Board has

not recommended the termination of pregnancy.

14. In my considered view therefore, the prayer as sought by the petitioner cannot be granted by this Court under the facts and circumstances of the case. The writ petition fails and it is hereby dismissed.

15. Let a certified copy of this order be given within a period of twenty-four hours on payment of usual charges.