
(2018) 04 CHH CK 0001
In the Chhattisgarh High Court
Case No : Writ Petition (C) No.886 of 2018

Mujim Khan

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:

Protection of Children from Sexual Offences Act, 2012 — Section 4, 6
Indian Penal Code, 1860 — Section 376, 366A
Medical Termination of Pregnancy Act, 1971 — Section 3(2), 3, 4

Citation : (2018) 04 CHH CK 0001

Hon'ble Judges : SANJAY K. AGRAWAL

Bench : Single Bench

Advocate : Parag Kotecha, Arun Sao

Final Decision : Allowed

Judgement

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1. The petitioner, who is father of a victim of rape and sexual violence, has preferred this writ petition for termination of pregnancy of his daughter",

which according to the petitioner is a result of commission of the offence of rape on his daughter. The petition was filed on 27-3-2018 and looking to,

the urgency, the matter was taken-up on same day and Medical Board consisting of Dean, Govt. Medical College and Hospital, Rajnandgaon; two",

senior gynecologists available in the hospital; one Radiologist and one Psychiatrist was constituted to examine the following aspects and report was,

directed to be submitted on 2-4-2018: -,

1. Examination report of the patient with regard to her physical and mental stage.,

2. Stage of pregnancy.,

3. Over all condition of foetus.,

4. How far the termination of pregnancy will be detrimental to the petitioner.,

5. How far it will be detrimental, if the petitioner is allowed to complete full term of pregnancy",

6. Investigation reports.,

2. Report has been submitted and on 2-4-2018, it was further directed to inform as to what are the offences that are registered against the accused",

who is alleged to have committed rape with the daughter of the petitioner and accordingly, it is informed that against the accused person, offence",

under Sections 366A, 376 of the IPC; Sections 4 and 6 of the Protection of Children from Sexual Offences Act have also been added subsequently",

and the accused has been arrested on 27-2-2018. Medical report has also been submitted before this Court.,

3. Mr. Parag Kotecha, learned counsel appearing for the petitioner, submits that the petitioner's daughter, who is aged about 17 years, has been raped",

by the accused person pursuant to which FIR under Crime No.9/2018 in Police Station Khadgaon, Distt. Rajnandgaon has been registered on 24-2-",

2018 and the petitioner's daughter was got examined in which she was found pregnant. She is ready and willing to undergo the termination of,

pregnancy. Since pregnancy beyond 20 weeks cannot be terminated without leave of the court and since the petitioner's daughter is carrying,

pregnancy of 24-26 weeks and is likely to affect her psychologically and it endangers her life also, the petitioner has knocked the doors of this Court",

by filing this writ petition as stated herein-above to prevent his daughter from severe mental agony of carrying unwanted pregnancy. Buttressing his,

submission by relying upon a decision of the Supreme Court in the matter of Suchita Srivastava and another v. Chandigarh Administration 1, a prayer",

has been made to direct termination of pregnancy applying the "best interests" theory to prevent the petitioner's daughter from further mental,

agony which is a grave injury to her. Mr. Kotecha has prayed for issuance of an immediate direction in that regard.,

4. Mr. Arun Sao, learned Deputy Advocate General appearing for the State/ respondents, submits that as per the direction of this Court, the petitioner",

was examined on 28-3-2018 by the medical team duly constituted and report has been placed on record.,

5. I have heard learned counsel for the parties and also considered the medical report with utmost circumspection.,

6. Before proceeding with the medical report, it would be appropriate to notice the relevant provisions by which pregnancy can be directed to be",

terminated under the Medical Termination of Pregnancy Act, 1971 (for short, 'the Act of 1971'). Section 3 of the Act of 1971 provides for when",

pregnancies may be terminated by registered medical practitioners and states as under: -,

Â 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 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, 1 (2009) 9 SCC 1",

(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 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.,

Â (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.â??",

7. The aforesaid provision permits termination of pregnancy by a registered medical practitioner with regard to the circumstances, formed in good",

faith, specified in sub-clauses (i) and (ii) of sub-section (2) of Section 3 of the Act of 1971 as stated herein-above. Likewise, Explanation I to sub-",

section (2) of Section 3 also provides in no uncertain terms that where the 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.,

8. In this regard, the Supreme Court in Suchita Srivastava (supra) has laid down the guidelines based on the principle of â??best interestsâ? 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: -,

â??36. Courts in other common law jurisdictions have developed two distinct standards while exercising â??parens patriaeâ? jurisdiction for the,

purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the â??best interestsâ? test and the,

â??substituted judgmentâ? test.,

37. As evident from its literal description, the â??best interestsâ? 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.â??,

9. The Supreme Court in the matter of X v. Union of India and others² 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: -,

â??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.â??",

10. Similar proposition has been laid down recently by the Supreme Court in the matter of X and others v. Union of India and others³ and also in the,

matter of Meera Santosh Pal and others v. Union of India and others⁴.,

² (2016) 14 SCC 382,

³ (2017) 3 SCC 458,

⁴ (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 ⁵ 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 others⁶, 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.â??,

13. At this stage, it would be appropriate to notice the medical report submitted by the Medical Board. In the medical report submitted, the condition of",

fetus i.e. gestation age of fetus has been indicated to be 24 to 26 weeks and it has been stated as under: -,

5 AIR 2017 SC 3931,

6 AIR 2017 SC 4037,

1. At present, she is mentally sound for her age & sex and physically stable with moderate anemia.",

2. On clinical examination, gestational age (stage) of pregnancy is 24 to 26 weeks, which is correlating with the ultrasonological findings.",

3. Clinically and ultrasonologically foetus is breech, alive and healthy.",

4. As per MTP Act 1971, MTP is permitted upto 20 weeks of gestation. However pregnancy has crossed the upper limit, she may need major",

surgical interventions and Blood transfusion, further more maternal morbidity and mortality may be anticipated.",

5. Pregnancy is high risk due to teenage thus complications of high risk pregnancy e.g. pre-eclampsia, preterm labour, PPH, Surgical Interventions",

(Maternal morbidity and mortality) may be anticipated.,

6. Investigations reports (CBC, BLOOD GROUP, RFT, LFT, URINE ROUTINE & MICROSCOPY and ULTRA SONOGRAPHY â?" OBST.)",

enclosed.â??,

14. From the aforesaid medical report, it is quite vivid that the stage of pregnancy on the date of examination is 24 to 26 weeks. It has been stated by",

the medical team that the pregnancy has cross the upper limit, she may need major surgical interventions and blood transfusion, further more maternal",

morbidity and mortality may be anticipated.,

15. The World Health Organization (WHO) in its report (updated January, 2018) considered Adolescent Pregnancy and held that complications during",

pregnancy and childbirth are the leading cause of death for 15 to 19 year-old girls globally. It has been held as under: -,

Specialty,Obstetrics

Symptoms,"Seizures, high blood pressure

Complications,"Aspiration pneumonia, cerebral hemorrhage, kidney failure, cardiac arrest

Usual onset:,After 20 weeks of pregnancy

Risk factors,Pre-eclampsia

Prevention,"Aspirin, calcium supplementation, treatment of prior hypertension

Treatment,"Magnesium sulfate, hydralazine, emergency delivery

Prognosis,1% risk of death

Frequency,1.4% of deliveries

Deaths,"46,900 hypertensive diseases of pregnancy (2015)

19. Now, this will bring me to the fact that the victim in the present case i.e. the petitioner herein is suffering from anemia. According to the",

Medical Jurisprudence, anemia can leave a person feeling tired and weak. If it is severe but goes untreated, it can increase the risk of serious",

complications like preterm delivery in case of pregnancy. Following risk factors for anemia in pregnancy have been held in the Medical Jurisprudence: ,

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Â â??Risk Factors for Anemia in Pregnancy All pregnant women are at risk for becoming anemic. That is because they need more iron and folic,

acid than usual. But the risk is higher if you: ,

â?¢ Are pregnant with multiples (more than one child),

â?¢ Have had two pregnancies close together,

â?¢ Vomit a lot because of morning sickness,

â?¢ Are a pregnant teenager,

â?¢ Don't eat enough foods that are rich in iron,

â?¢ Had anemia before you became pregnantâ?¢?

20. The Medical Board has stated that due to teenage of the daughter of the petitioner, there are complications of high risk pregnancy like pre-

eclampsia, preterm labour, PPH, Surgical Interventions (Maternal morbidity and mortality).",

21. According to the medical jurisprudence, pre-eclampsia means a disorder of pregnancy characterised by the onset of high blood pressure and often",

a significant amount of protein in the urine. Preterm Labour is defined as regular contractions of the uterus resulting in changes in the cervix that starts,

before 37 weeks of pregnancy. Changes in the cervix include effacement (the cervix thins out) and dilation (the cervix opens so that the fetus can,

enter the birth canal). PPH â?¢ Primary postpartum haemorrhage (PPH) is loss of blood estimated to be >500 ml. from the genital tract, within 24",

hours of delivery.,

22. Reverting to the facts of the case in hand, it is quite vivid that pregnancy of the petitioner's daughter has crossed 24 weeks of gestational age and",

unless the judicial order directing termination is available, it may not be possible for the doctors even to proceed with termination of pregnancy.",

23. Taking into consideration the entire facts including the age of the petitioner's daughter (17 years) and circumstances what have been stated by the,

father of the victim, gestational age of the victim, judicial precedents, taking into consideration her adolescent pregnancy and risk involved in childbirth,",

medical condition of the victim, as she is suffering from anemia and complications of high risk pregnancy viz., pre-eclampsia, preterm labour, PPH,",

Surgical Interventions (Maternal morbidity and mortality), considering the fact that the fetus if allowed to born, would have a limited life span with",

serious handicaps, and that as per Explanation I appended to sub-section (2) of Section 3 of the Act of 1971 mental agony of a rape victim has to be",

treated as a case of grave injury, particularly taking into consideration that it is in the best interests of the victim alone which has to be kept in view",

and considering the provisions of Sections 3 and 4 of the Act of 1971 and Explanation I that the termination of pregnancy is immediately necessary to,

save the life of a pregnant girl like the petitioner's daughter, in the interest of justice, it would be proper to direct that a team of five doctors shall",

consider the feasibility of termination of pregnancy at this gestational age.

Accordingly, the writ petition is allowed with following directions: -",

1. The petitioner's daughter (Ku. Safeena), aged about 17 years, to remain present at Dr. B.R. Ambedkar Government Medical College Hospital,"

Raipur on 5-4-2018 at 10 a.m. so that termination of pregnancy can be carried out on that day or on the next day by a team of doctors consisting of,

Dean, Medical College; two senior gynecologists available in the hospital; one Radiologist; one Clinical Psychiatrist and one Anesthetist. The Dean of",

Dr. B.R. Ambedkar Government Medical College, Raipur is directed to make all such arrangements if the victim i.e. daughter of the petitioner and the",

petitioner (victim's father) give consent in the prescribed proforma under the Act of 1971 and the rules made thereunder.,

2. The termination of pregnancy of the petitioner will be supervised by the above-stated Medical Board who shall maintain complete record of the,

procedure which is to be performed on the petitioner for termination of her pregnancy.,

3. The District Collector, Rajnandgaon shall ensure safe journey of the petitioner's daughter along with her parents from her place of residence to Dr.",

B.R. Ambedkar Hospital, Raipur on 5-4-2018 and all necessary expenses will be borne by the State in this regard.",

4. On being informed, the District Collector, Raipur shall make necessary arrangements for journey of the petitioner's daughter and her parents from",

Raipur to her place of residence after her discharge from hospital.,

5. The petitioner's daughter will be allowed all medical and requisite facilities till she is medically fit even after the termination of pregnancy.,

Â 24. Name and details of the petitioner's daughter as mentioned in para 23(1) of this order shall not be disclosed and she shall be named as 'ABC'.,

25. A copy of this order be sent to the Dean, Medical College, Raipur and Collector, Rajnandgaon as also the Collector, Raipur directly by fax and e-",

mail by today itself and through Mr. Arun Sao, Deputy Advocate General, today itself so that he or she can make arrangements for termination of",

pregnancy of the petitioner's daughter well in advance.,

26. No order as to cost(s).,

27. Certified copy today to the parties.,