
(2019) 06 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10881 Of 2019

Roshni And Another

APPELLANT

Vs

State Of Madhya Pradesh And Others.

RESPONDENT

Date of Decision : 06-06-2019

Acts Referred:

Medical Termination Of Pregnancy Act, 1971 — Section 2(d), 3, 3(2), 3(2)(i), 4, 4(b), 5

Citation : (2019) 06 MP CK 0025

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Gagan Bajad, Lokesh Mehta

Final Decision : Disposed Of

Judgement

1. The petitioners have filed the present petition claiming the writ of mandamus for medical termination of pregnancy of petitioner No.1.

2. According to the petitioners, they are husband and wife, by virtue of their marriage solemnized on 24.11.2017. Out of the aforesaid wedlock, petitioner No.1 has been conceived. As per report of the Radiologist, the right Kidney of foetus is not visible and there are other complications. On the basis of aforesaid report, the treating Doctor gave an opinion that after birth, the child may not survive for even 2-3 days. In view of the above, petitioner No.1 has submitted an application before the Collector, Indore seeking termination of her pregnancy.

3. Since the age of foetus is more than 20 weeks, therefore, under the provisions of Medical Termination of Pregnancy Act, 1971 (hereinafter, for short, "the Act of 1971"), the doctor has refused to terminate her pregnancy, hence both the petitioners have filed the present petition before this Court.

4. By order dated 3.6.2019, this Court directed the Medical Board of M.Y. Hospital, Indore to examine petitioner No.1 and submit the report. Today, the petitioners have filed the report and according to which, again opinion has been given that the termination of pregnancy cannot be done after 20 weeks of

pregnancy.

5. Learned counsel appearing for the petitioner submits that as per Section 3 of the Act of 1971, the pregnancy may be terminated by a registered medical practitioners where the pregnancy is not more than 12 weeks, if the medical practitioner, or where the pregnancy is more than 12 weeks, but does not exceed 20 weeks, at least two medical practitioners are of opinion that the continuation 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 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. Pregnancy of any woman, who is less than eighteen years can be terminated only with the consent in writing of her guardian.

6. The Apex Court in case of Ms. X Vs. Union of India & Others : AIR 2016 SC 3525 has held that Section 5 of the Act lay down the exception to Section 3 if as per opinion of less than 2 registered Medical Practitioner gives the opinion of in good faith in respect of termination of pregnancy to save the life of pregnant women. By placing reliance over the aforesaid section the Apex Court has granted liberty to the petitioner to terminate her pregnancy. Relevant portion of the aforesaid judgement is reproduced below:

"5. The question that arises for our consideration is, whether it would be justified and legal, to terminate the pregnancy of the Petitioner, which the Medical Report itself shows, as of 24 weeks duration? Learned Attorney General representing the Union of India has invited our attention to Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act') which is extracted below:

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 Subsection (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 [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.

A perusal of the above provision reveals, that the provision deals with termination of pregnancies of different durations, and the procedure contemplated therefor.

Section 3 leaves no room for doubt, that it is not permissible to terminate a pregnancy, after 20 weeks. However, Section 5 of the Act lays down exceptions to Section 3. Section 5 of the Act is also reproduced hereunder: 5. Sections 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.

A perusal of Section 5 of the Act reveals, that the termination of pregnancy, which is necessary to save the life of the pregnant woman, is permissible."

In case of *Tapasya Umesh Pisal Vs. Union of India*, reported in AIR 2017 SC 3931 the Apex Court has permitted termination of pregnancy where the girl was into her 24 week of pregnancy. Relevant portion of the aforesaid judgement is reproduced below:

"9. In these circumstances, it is difficult for us to refuse the permission to the petitioner to undergo medical termination of pregnancy. It is certain that the fetus if allowed to born, would have a limited life span with serious handicaps which cannot be avoided. It appears that the baby will certainly not grow into an adult.

10. In view of the above, we consider it appropriate in the interests of justice and particularly, to permit the petitioner to undergo medical termination of her pregnancy under the provisions of Medical Termination of Pregnancy Act, 1971.

Mr. Ranjit Kumar, learned Solicitor General appearing for the respondents, has not opposed the petitioner's prayer on any ground, legal or medical. We order accordingly."

In case of *Meera Santosh Pal & Others Vs. Union of India and Others*, reported in 2017(I) MPWN 44, the Apex Court has permitted the termination of pregnancy even after 24 weeks. Relevant portion of the aforesaid judgement is reproduced below:

"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....."

The crucial consideration in the present case is whether the right to bodily

integrity calls for a permission to allow her to terminate her pregnancy. The report of the Medical Board clearly warrants the inference that the continuance of the pregnancy involves the risk to the life of the pregnant woman and a possible grave injury to her physical or mental health as required by Section 3 (2)(i) of the Medical Termination of Pregnancy Act, 1971. Though, the pregnancy is into the 24th week, having regard to the danger to the life and the certain inability of the fetus to survive extra uterine life, we consider it appropriate to permit the petitioner to terminate the pregnancy. The overriding consideration is that she has a right to take all such steps as necessary to preserve her own life against the avoidable danger to it. "

In recent judgement passed by the constitution bench of the Supreme Court in case of *Murugan Nayakkar Vs. Union of India & Others*, passed in W.P(Civil). No.749/2017 the Court has permitted termination of pregnancy of a 13 year old victim of rape and sexual abused, considering the trauma which she has suffered. Relevant portion of the aforesaid judgement is reproduced below:

"The petitioner who is a 13 years old girl and a victim of alleged rape and sexual abuse, has preferred this writ petition for termination of her pregnancy. When the matter was listed on 28.8.2017, this Court has directed constitution of a Medical Board at Sir J.J. Group of Hospitals, Mumbai. Be it noted, this Court had also mentioned the composition of the team of doctors. The petitioner has appeared before the Medical Board on 1.9.2017 and the Medical Board that has been constituted by the order of this Court expressed the opinion Signature Not Verified Digitally signed by GULSHAN KUMAR that the termination of pregnancy should be carried out. That ARORA Date: 2017.09.06 18:28:22 IST Reason: apart, it has also been opined that termination of pregnancy at this stage or delivery at term will have equal risks to the mother. The Board has also expressed the view that the baby born will be preterm and will have its own complications and would require Neonatal Intensive Care Unit (N.I.C.U.) admission.

We have heard Ms. Sneha Mukherjee, learned counsel appearing for the petitioner, Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of pregnancy should be allowed.

In view of the aforesaid premise, we direct the petitioner to remain present at the Sir J.J. Group of Hospitals, Mumbai in the evening of 7.9.2017 so that the termination of pregnancy can be carried out preferably on 8.9.2017. Mr. Nishant R. Katneshwarkar shall apprise the Dean of Sir J.J. Group of Hospitals, Mumbai so that he/she can make necessary arrangements for termination of the

pregnancy.

A copy of the order passed today be handed over to learned counsel for the petitioner and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

The writ petition is accordingly disposed of. There shall be no order as to costs."

7. In the light of the aforesaid, learned counsel for the petitioner submits that a Committee of 5 doctors be constituted and the said Committee may be directed to examine petitioner No.1 and thereafter proceed for the termination of the pregnancy, if it is found that it is not dangerous to her life.

8. Learned counsel appearing on behalf of the respondents submits that looking to the report of the Radiologist an order may be passed in accordance with law.

9. In view of the aforesaid submissions made by the parties, the present petition is disposed of with a direction to the respondent No.2 to constitute a Committee of 5 senior doctors immediately and the said Committee is directed to examine the physical condition of petitioner No.1 and if it is found that it is not dangerous to her life, the Committee may proceed with the termination of her pregnancy.

10. With the aforesaid observations and directions, present petition is disposed of.

C.C. as per Rules.