
(2020) 03 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 4883 Of 2020

X Minor Through Her Father Inder Singh

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

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

Citation : (2020) 03 MP CK 0017

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : M.R. Sheikh, Mayank Purohit

Final Decision : Allowed

Judgement

The petitioner has filed the present petition seeking permission/direction for termination of pregnancy of his daughter. The daughter of the petitioner

was raped by the accused for which an FIR has been lodged under Crime No.165/2019, Police Station, Sanawad, District Khargone. Because of the

said unfortunate incident, she became pregnant and at present, she is carrying pregnancy of 20 weeks. Since, she is victim of rape, therefore, she is

not interested in continuing the pregnancy and hence, father of the victim i.e. the petitioner has approached this Court seeking direction to the

respondent to terminated the pregnancy.

This Court has directed Superintendent of the M.Y. Hospital to examine the condition of the victim whether the termination is advisable and it would

not effect the health of the victim.

Learned Government Advocate has produced the report submitted by the Joint Director and Superintendent of M.Y. Hospital which is reproduced

below:

As per your order the committee members have examined the minor victim on 02/03/2020 thoroughly and we conclude through this that according

to her USG report 29.02.2020 her pregnancy is 20 wks+0 day. According to this as on today her pregnancy is 20 wks+3 days.

According to MTP act & rule, pregnancy can be terminated up to 20 wks. So that another court order will be required for MTP of this patient.

In committee members opinion, she is fit physically & mentally for this procedure.

As per the report, the period of pregnancy is 20 weeks + 3 days and, therefore, same can be terminated.

Learned counsel for the petitioner submits that in view of the explanation of sub-section (2) of Section 3 the termination of pregnancy is permissible.

The Apex Court in case of Ms. X Vs. Union of India & Others, reported in AIR 2016 SCC 352 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 393.1 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.â??

In case of *Meera Santosh Pal & Others Vs. Union of India and Others*, reported in 2017(I) MPWN 4, 4the Apex Court has permitted the termination

of pregnancy even after 24 weeks. Relevant portion of the aforesaid judgement is reproduced below:

â??The crucial consideration is that a womanâ??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 womanâ??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 womanâ??s entitlement to

carry a pregnancy to its full term, to give birth and to subsequently raise children.....â? 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. â??

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:

â??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.â??

In light of the aforesaid judgment, considering the age of the girl, trauma which she has to suffer and the agony she is going through at present and

also keeping in view the report of Medical Board constituted by this Court, this Court is of the opinion that the prayer made by the petitioner and his

daughter deserves to be allowed and is accordingly allowed. The case of the petitioner is covered under explanation of sub-section (2) of Section 3 of

the Act of 1971.

The respondents are directed to carry out termination of pregnancy immediately if health condition of the girl i.e. the daughter of the petitioner permits

to do so. The Doctors specialized in the field are the best experts to take decision about health condition of girl before and after termination of

pregnancy. This Court is only giving permission of termination of pregnancy in view of judgement passed by the Apex Court in aforementioned cases

but subject to the health condition and consent under the Act. The Dean, MGM Medical College and M.Y. Hospital, Indore is directed to admit the

daughter of the petitioner (prosecutrix) and examine before termination of pregnancy within 3 days positively as per the consent given by her parents

as required under sub Section (4) of Section 3 of the Medical Termination of Pregnancy Act, 1971 & health condition.

It is needless to mention that the Head of the Department of Gynaecologist, Head of the Department of Anaesthesia and all other specialist will

remain present at the time termination of pregnancy is carrying out, as the girl is of tender age and as there is a threat of life of the girl also. Not only

this, after the termination of pregnancy is carrying out, the State of Madhya

Pradesh shall ensure post operative care of the girl (prosecutrix).

With the aforesaid, present writ petition stands allowed.

C.C. as per rules.