
(2021) 01 KL CK 0005
In the High Court Of Kerala
Case No : Writ Petition (C) No. 29230 Of 2019

Xxx

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Medical Termination Of Pregnancy Act, 1971 — Section 3, 4, 5

Citation : (2021) 01 KL CK 0005

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : Ramesh P, P Vijayakumar, Vinitha B

Final Decision : Allowed

Judgement

1. The mother of a minor girl, aged 14 years, who is an unfortunate rape victim, has approached this Court pointing out that the girl is carrying 22 weeks of pregnancy and continuation of her pregnancy would be critical to her health and contrary to her interest. A Crime no.628/2020 has been registered in Chakkarakkal Police Station, in respect of the incident. The Writ Petition is filed producing Ext.P4 medical report dated 18.12.2020, which found the gestational age as 22 weeks. It is stated that victim girl is not mentally prepared to accept the pregnancy and that there is high risk in the event of continuation of her pregnancy as she has been subjected to sexual assault.

2. When the matter came up for admission on 29.12.2020, this Court passed an interim order directing the Superintendent of Government Medical College Hospital, Pariyaram, to constitute a medical board with all specialists required to conduct medical termination of pregnancy and file a report before this Court in respect of the medical condition of the child and all other related aspects for conducting the procedure of medical termination.

3. The learned Government Pleader has made available the minutes of the Medical Board convened on 29.12.2020 pursuant to the interim order passed by

this Court in which it is stated as follows:

"Minutes of the Medical Board Convened on 29.12.2020 reg. the POCSO, Cr.no.628/2020 of Chakkarakkal Police Station and W.P.(C) No. 29230 of 2020-P of Hon'High Court of Kerala.

Members Present:

1. Dr.K.M. Kuriakose, Principal & Chairman
2. Dr. Sudeep K, Medical Superintendent
3. Dr Ajith S. HOD OBGYN
4. Dr Beena George, Professor, OBGYN
5. Dr Dhruhin A V. Professor, Psychiatry

Based on the report of the medical officer, Dr Beena George, Professor, Dept. Of Obstetrics and Gynaecology, after examination of the victim of POCSO case, crime no: 628/2020 of Chakkarakkal Police Station who was brought to Government Medical College, Kannur on 18/12/2020 the Medical Board examined the case and came to the following conclusions.

1. The victim is now having a pregnancy of period of gestation 23 weeks plus 4 days.
2. As she is only 14 years old, continuation of pregnancy may be detrimental to the physical and mental health of the victim.
3. The usual means of termination of pregnancy involves oral medication followed by mechanical induction with a view towards vaginal expulsion of products of conception.
4. The Medical board felt that the available methods of MTP are effective only upto 20 weeks of gestation. Beyond 20 weeks, pregnancy is to be induced as per induction of normal pregnancy.
5. In view of the gestational age of 23 weeks plus 4 days, in addition to the usual risks like haemorrhage, sepsis, risk of blood transfusion etc, due to the present gestational age, there is a possibility that the uterus may not respond to the usual methods of medical induction. In that situation we may have to resort to surgical methods(hysterotomy) which involves anaesthesia and surgical risks.
6. There is a possibility that the child may be born alive, however the chances of survival is remote.
7. As per National Resuscitation Programme Guidelines India and American Academy of Paediatrics, resuscitation is considered only after completion of 24 weeks of pregnancy. If the baby is born before 24 weeks gestational age, resuscitation need not be considered.

8. Dr. Dhruhin A V, Professor, Dept. of Psychiatry after examination of the victim, opined that continuation of pregnancy may result in severe psychiatric trauma. Hence it was suggested that termination of pregnancy could be considered.

9. Moreover, the victim and her mother are requesting for termination of pregnancy."

From the report, it is seen that as on today the gestational age is 25 weeks and 3 days. The Psychiatrist, who examined her has reported that the continuance of pregnancy will result in serious psychiatric trauma to the minor.

4. As per section 5 of the Medical Termination of Pregnancy Act, termination of pregnancy is permissible even in cases where the period of gestation exceeds the period prescribed in Sections 3 and 4 of the Act, which reads as follows:

"5. S.3 and S.4 when not to apply. - (1) The provisions of S.4 and so much of the provisions of sub-section (2) of S.3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in 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."

5. This Court has in the judgments in ABC v. Union of India & others: 2020(4) KLT 279, Ms. X v. State of Kerala and Others: 2016 (4) KLT 745, etc, have ordered termination of pregnancy exceeding 20 weeks in the case of rape victims who were not mentally prepared to deliver the child, in order to save their lives. The Apex Court has in the judgment in A v. Union of India: (2018)4 SCC 75 permitted termination in a case where the gestational age was 25-26 weeks. In Murugan Nayakkar v. Union of India : 2017 SCC online SC 1092 allowed termination of pregnancy in the case of 13 year old child and in Sarmishtha Chakraborty v. Union of India: (2018) 13 SCC 339, permitted termination of pregnancy when the gestational age was 26 weeks, in view of the recommendation of the medical board and the medical report revealing the threat of severe mental injury to the woman and to the multiple complex problems to the child, if born alive, involving complex cardiac corrective surgery stage by stage after birth, in the event of continuation of the pregnancy. In Meera Santosh Pal v. Union of India: (2017) 3 SCC 462 also permission was granted when the pregnancy crossed 24 weeks, in view of the medical reports pointing out the risk involved. In the judgment reported in Neethu Narendran v. State of Kerala : 2020 (3) KHC 157 also this Court permitted termination of pregnancy when gestational age crossed 23 weeks. As found in those cases the minor victim in this case is also not prepared to deliver a child in the situation. In view of the trauma that the minor girl has undergone and taking note of the opinion of the Psychiatrist coupled with the report of medical board, I am of the view that the Writ Petition can be allowed permitting termination of pregnancy.

6. In the event the baby is born alive, it has to be taken care of as observed by the Bombay High Court in the judgment XYZ v. Union of India and Others (2019

(3) Bom. CR 400), as follows:

"If a child is born alive, despite attempts at the medical termination of pregnancy, the parents as well as the doctors owe a duty of care to such child. The best interests of the child must be the central consideration in determining how to treat the child. The extreme vulnerability of such child is reason enough to ensure that everything, which is reasonably possible and feasible in the circumstances, must be offered to such child so that it develops into a healthy child."

7. Therefore, the petitioner is permitted to subject her daughter to medical termination of pregnancy. As any delay in undertaking the termination will involve serious consequences affecting the girl as well as the life of the baby in the womb, there shall be a direction to the Superintendent of Government Medical College, Kannur, Pariyaram to see that the termination of pregnancy of the minor girl-the daughter of the petitioner is undertaken by competent Doctors under his/her supervision, at the earliest point of time, if possible, today itself in accordance with the provisions of the Medical Termination of Pregnancy Act, 1971, its rules and all other rules, regulations and guidelines prescribed for the purpose. The Medical Board shall maintain a complete record of the procedure which is to be performed on the girl for termination of her pregnancy.

8. There will be a further direction to the Doctors to take the tissue of the foetus for DNA identification and to maintain the same intact for future purposes, especially due to the fact that a criminal case is pending in the instant case. If the child is born alive, despite the attempts at medical termination of the pregnancy, the Doctors shall ensure that everything, which is reasonably possible and feasible in the circumstances and in contemplation of the law prescribed for the purpose, is offered to such child so that he/she develops into a healthy child.

9. The petitioner is accordingly directed to report with her minor daughter before the Superintendent of the Government Medical College, Kannur, Pariyaram today itself.

10. The Registry and all concerned, shall see that absolute privacy is maintained with respect to the identity of the petitioner and that of minor girl while issuing the certified copy of the judgment or otherwise. There shall be a direction that copy of the Writ Petition, affidavit, the documents annexed to it and the medical report shall not be issued to any third person without obtaining orders from this Court.

The Writ Petition is allowed accordingly.