

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7207 of 2015

Dhandapani

... Petitioner

Vs.

1.The District Collector
Tiruppur District
Tiruppur.

2.Dharapuram Government Hospital
Rep by its Doctor
Dharapuram
Tiruppur District

3.The Inspector of Police
All Women Police Station
Dharapuram
Tiruppur District.

... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records or order in IP No.1823 dated 25.02.2015 on the file of 2nd respondent herein and quash the same and consequently direct the 2nd respondent to terminate the pregnancy of petitioner's daughter named Sneka Priya aged about 15 years after taking necessary test, if any.

For Petitioner : Mr.N.Ponraj
For Respondent : Ms.P.Rajalakshmi
Government Advocate

O R D E R

Heard Mr.N.Ponraj, learned counsel appearing for the petitioner and Ms.P.Rajalakshmi, learned Government Advocate appearing for the respondents.

2.Petitioner seeks for issuance of Writ of Certiorarified Mandamus to quash the endorsement made by the Medical Officer, Government Hospital, Dharapuram in the O.P. Chit stating that for medical termination of pregnancy, Court order is essential.

3.The petitioner is a Mason and living in Pudhuk Colony, Chinnakkampalayam Post, Dharapuram Taluk, Tiruppur District. The petitioner's daughter aged about 15 years is said to have been raped and in this regard a complaint has been preferred before the third respondent which has been registered as Crime No.2 of 2015 on 17.02.2015 for offence under Sections 3 and 4 of Protection of Child from Sexual Offences Act read with Section 450 and 506(ii) of I.P.C.

4.The petitioner's daughter is a student of IX standard and studying in a Girls High School at Dharapuram. In this writ petition, the petitioner seeks for a direction to enable the Doctors to terminate the pregnancy. Petitioner would state that directing the petitioner to obtain a Court order itself is un-tenable in the light of the power granted to the second respondent under Section 3 of the Medical Termination of Pregnancy Act, 1971.

5.When the case was heard on 13.03.2015, it was submitted by the petitioner that the petitioner's daughter is 12 weeks pregnant and there is no bar for the Doctors to consider the petitioner's request for terminating the pregnancy in accordance with section 3(2)(a) of the Act. In the light of the said submission, this Court directed the learned Government Advocate to get written instruction from the second respondent and the matter was posted today for hearing.

6.Today, the written instruction of the Duty Medical Officer, Government Hospital, Dharapuram has been placed before this Court wherein, the Doctors apart from stating about the condition of the petitioner's daughter has stated that she is 13 weeks pregnant and her general health condition is good. So far as the request made by the petitioner for terminating the pregnancy, the second respondent has certified that the petitioner's daughter is fit to get aborted after blood transfusion and taking noted investigation and blood reports. Further it has been opined that there is general possibility of excessive bleeding and anaphylaxis to drugs in any patient undergoing abortion and this may occur in any patient. Further it is stated that the problem due to abortion can occur in any patient, that there is no special reason for the petitioner's daughter to avoid abortion except for aneamia which can be corrected and she needs anesthetist fitness if needed abortion to rule out any general illness and to check cardiac status.

7.Since the Doctors have certified that the petitioner's daughter is 13 weeks pregnant then clause (b) under Section 3(2) of the Act will come into operation. In terms of the said clause, where the length of pregnancy exceeds 12 weeks but does not exceed 20 weeks, it requires two registered medical practitioners to form opinion in good faith in terms of the provisions of the said Act. For better appreciation, Section 3 of the Medical Termination of Pregnancy Act, 1971 is quoted hereunder:-

"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 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 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 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 lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in Cl.(a), no pregnancy shall be terminated except with the consent of the pregnant woman."

8. The above provision safeguards the interest of the medical practitioner in cases where pregnancies are terminated by them and registered medical practitioner shall not be guilty of any offence under the Indian Penal 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 the Act as stated above. In case, the Doctors are of the opinion that the petitioner's request for termination of the pregnancy of his daughter is required, then the procedure under Section 3 (2)(b) of the Act has to be followed and the opinion of two medical practitioners is required.

9. The petitioner would state that the second respondent should consider the plight of his daughter who is a student of IX standard and the grave injury to her physical and mental health will. If the foetus is not aborted her dignity and purity of physical frame will be shattered and if the pregnancy continues, she would grow up with traumatic experience and unforgettable shame and therefore, it is a fit case where the second respondent should exercise power under Section 3 of the Act.

10. In the light of the submissions made by the father of the girl and taking into consideration the opinion given by the second respondent as referred supra, there will be a direction to the second respondent to consider the petitioner's request for termination of pregnancy of his daughter in the light of section 3(2)(b) of the Act as expeditiously as possible bearing in mind the health condition of the petitioner's daughter. Since, the criminal case has been lodged stating that the petitioner's daughter has been raped and the case is under investigation, the second respondent is directed to preserve the foetus in accordance with the prescribed procedure. This writ petition is disposed of with the above observations. No costs.

Sd/-

Assistant Registrar

Dated: 16.3.15

True Copy

Sub Assistant Registrar

To

1. The District Collector
Tiruppur District
Tiruppur.

2.Dharapuram Government Hospital
Rep by its Doctor
Dharapuram
Tiruppur District

3.The Inspector of Police
All Women Police Station
Dharapuram
Tiruppur District.

+1 cc to Mr.N.Ponraj, Advocate,SR.14483

+1 cc to Government Pleader,SR.14795.

krd 16/3

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