

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.8570 of 2015
and M.P.No.1 of 2015

M.Kala

.. Petitioner

Vs

1. The Inspector of Police,
W-13, All Women Police Station,
Washermanpet, Chennai.
2. The Superintendent
Government Raja Sir Ramaswamy
Mudaliar Hospital,
Cemetery Road, Royapuram,
Chennai 600 013.
3. The Dean
Government Stanley Medical College Hospital,
Royapuram, Chennai 600001.
4. The State of Tamil Nadu,
rep. by the Secretary,
Health Department,
Fort St. George, Chennai 600 009.

..Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of MANDAMUS to direct the 1st respondent to initiate appropriate proceedings against the II and III respondents for dereliction of duty and consequently direct the IV respondent to award appropriate compensation as this Court deems fit to the minor Mohanapriya for the loss of an academic year and the immense mental agony caused.

For Petitioner : Ms.Sudha Ramalingam
For Respondents: Mr.R.Vijayakumar, AGP

ORDER

Heard Ms.Sudha Ramalingam, learned counsel for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader, who took

notice for the respondents and considered the materials placed on record.

2. The petitioner is the mother of Mohanapriya, who is said to have been born on 13.11.1998, was undergoing her 10th standard education in the Higher Secondary School, Patel Nagar, Tondiarpet, Chennai. The petitioner would state that her daughter has completed 16 years of age and she is running 17. The petitioner's son Ramachandran aged about 14 is studying in 8th standard in Arignar Anna Middle School, IOC, Tondiarpet.

3. The petitioner would state that one Suresh Kumar is known to her for the last 4 years and he used to visit their house often as a family friend and it appears that he also used to talk to the petitioner's daughter Mohanapriya. The petitioner is stated to be employed in a Textile shop at Washermanpet and her working hours is between 09.00 a.m. and 08.00 p.m. and the children go to school and come back and stay at their house.

4. The petitioner would state that on 27.02.2015, her daughter Mohanapriya complained of severe stomach pain and she took her to Government Stanley Hospital, Chennai and she was admitted for treatment till 03.03.2015. Subsequently, she was discharged and she was referred to RSRM hospital, the 2nd respondent herein for further treatment. The petitioner would state that only on 03.03.2015, the Doctors in the Government Stanley Hospital told the petitioner that her daughter is pregnant and she has to be taken to RSRM hospital for medical termination of pregnancy and treatment. The petitioner is said to have given her consent for medical termination of pregnancy on the same date. But, it is stated that till date, the same has not been done and therefore, the petitioner has approached this Court by way of this writ petition.

5. The learned counsel for the petitioner would submit that though the petitioner's daughter was admitted on 27.02.2015, she was not informed that her daughter was pregnant till 03.03.2015, when she was referred to RSRM hospital and once the Doctors have come to know that her daughter was pregnant, they should have immediately informed the police. Therefore, it is stated that directions have to be issued to the hospital to approach this matter with proper care and caution. Further, it is submitted that because of the delay in informing the police, the FIR was not registered and only after the NGO interfered with the matter, the FIR was registered on 10.03.2015 in Crime No.4 of 2015 for offences under Section 354, 376 IPC and Section 4, 6, 10 of Protection of Children from Sexual Offences Act, 2012 (POSCO Act). With the above facts, the learned counsel for the petitioner would state that non-intimation of the crime to the police has resulted in the delay in registering the FIR and it amounts to criminal dereliction of duty.

6. The learned Additional Government Pleader submitted that all the procedures have been properly followed and the FIR has been registered and the accused has been arrested and remanded to judicial custody and as of now, he is confined in the Central Prison, Puzhal. Further, it is stated that there is no dereliction or error in the manner in which the case has been registered and dealt with.

7. Dr.T.S.Meena and Dr.J.Betty Agnes are present in Court and Mrs.Nazeema, Inspector of Police is also present.

8. Both Doctors have stated that in the Accident Register, an endorsement was made on 04.03.2015 at 08.15 p.m., which clearly shows that intimation has been given to the police. A copy of the Accident Register bearing Sl.No.5751715 has also been produced before the Court, which, prima-facie shows that report has been given to the police. The Accident Register further shows that the Doctors have recorded that the petitioner's daughter was pregnant at that time and the gestation of fetus is 7 to 8 weeks. Therefore, prima-facie, it is seen that there is record to show that the police have been informed.

9. The other allegation that on 27.02.2015 itself the petitioner should have been informed about the pregnancy is a question which cannot be decided at this juncture, since the treatment at present is being given by the Doctors of RSRM hospital, after the petitioner's daughter was shifted to the said hospital from the Government Stanley Medical Hospital. Therefore, that aspect of the matter is left open to the petitioner to agitate the same, if need arises at a later point of time, since the investigation has just commenced and the accused has been arrested and remanded to judicial custody and the petitioner's daughter health is being taken care of.

10. It is seen that an Expert Committee was formed for considering the petitioner's daughter condition under the Chairmanship of a Professor and 4 members and one of the members of the team viz., Dr.T.S.Meena, Project Officer, Family Welfare is present in Court today. The report of the meeting held by the Expert Committee held on 18.03.2015 has been produced before this Court, from which, it is seen that the Committee noted the patient's (petitioner's daughter) medical history, clinical, laboratory and sonographic findings and found that her condition is stable and the petitioner's mother has also requested for MTP and hence decided as per MTP Act and consent was directed to be obtained from the patient and her mother as the patient was a minor and to get anesthetic fitness for MTP and also to inform the police regarding sending of the products of conception for DNA analysis.

11. Section 3 of the Medical Termination of Pregnancy Act, 1971 gives power to the registered Medical Practitioner to conduct MTP and

when such registered Medical Practitioner terminates pregnancy, they shall not be guilty of any offence under the Indian Penal Code or any other law for the time being in force, if any pregnancy is terminated in accordance with the provisions of the Act. Further, the statute states that in case the Doctors are of the opinion that the parents' request for termination of the pregnancy of their daughter is required, then the procedure under Section 3(2) of the Medical Termination of Pregnancy Act, 1971, has to be followed.

12. In the instant case, the Doctors have certified that the length of pregnancy has not exceeded 12 weeks and therefore, the case would fall under Section 3(2)(a). From the report of the Expert Committee, it is seen that the petitioner as well as her daughter have given their consent and the medical team has considered the health condition of the petitioner's daughter and has decided to perform the medical termination of pregnancy.

13. The object of the provision especially Section 3(2)(a) is with a view to prevent the minor girl from grave injury to her physique and mental health and if the fetus is not aborted, her dignity and the physique is likely to be shattered and if the pregnancy continues, she would grow with traumatic experience and unforgettable shame and therefore, the Doctors of the 2nd respondent hospital were fully justified in resorting to medical termination of pregnancy by exercising their power under Section 3(2)(a) of the Medical Termination of Pregnancy Act, 1971.

14. In the light of the above, the writ petition is disposed of by directing the Doctors of the 2nd respondent Hospital to proceed in accordance with their decision taken under Section 3(2)(a) of the Medical Termination of Pregnancy Act, 1971, at the earliest, taking into consideration the health condition of the daughter of the petitioner. After the completion of the above process, the respondent/Doctors are directed to send the products of conception for DNA analysis and after DNA analysis, the products of conception shall be preserved along with the report.

15. So far as the allegation against the Doctors of the 2nd respondent hospital is concerned, the same has been found to be factually incorrect since in the Accident Register the condition of the girl has been clearly recorded and the intimation has also been given to the police.

16. The other allegation that the petitioner was not informed about the pregnancy of her daughter when she was admitted in the Government Stanley Medical College Hospital on 27.02.2015 is an issue to be agitated by the petitioner later after the investigation proceeds.

17. In the light of the above facts, the 1st respondent police is directed to expedite the investigation process and file a final report at the earliest, by strictly adhering to the principles laid down under the Code of Criminal Procedure.

The Writ Petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

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-s/d-

Assistant Registrar (CS-II)

Dt:25/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
W-13, All Women Police Station,
Washermanpet, Chennai.
2. The Superintendent
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3. The Dean
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4. The Secretary to Govt.
State of Tamil Nadu,
Health Department,
Fort St. George, Chennai 600 009.

+ 1 cc to Govt.Pleader SR 16645

+ 3 ccs to M/s.Sudha Ramalingam, Advocate SR 16546

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