

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1498 of 2016

1. Ku. Tomin Sahu D/o Shri Deharlal Sahu, Aged About 17 Years R/o Village Nawagaon, Khisora Tahsil Magarlaod, District Dhamtari (Chhattisgarh), Through Her Natural/Legal Guardian & Mother Smt. Savita Sahu W/o Shri Deharlal Sahu.
2. Deharlal Sahu, S/o Shri Januram Sahu, Aged About 42 Years R/o Village Nawagaon, Khisora Tahsil Magarlaod, District Dhamtari (Chhattisgarh)
3. Smt. Savita Sahu W/o Shri Deharlal Sahu, Aged About 40 Years R/o Village Nawagaon, Khisora Tahsil Magarlod, District Dhamtari (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Chief Secretary, Mantralaya, New Raipur, P.S. Rakhi, District Raipur (Chhattisgarh)
2. The Secretary, Department Of Home, Mantralaya, New Raipur, P.S. Rakhi, District Raipur (Chhattisgarh)
3. The Secretary, Department Of Health & Family Welfare, Mantralaya, New Raipur, P.S. Rakhi, District Raipur (Chhattisgarh)
4. The Collector, Dhamtari, District Dhamtari, Chhattisgarh.
5. The Superintendent Of Police, Dhamtari, District Dhamtari, Chhattisgarh.
6. Station House Officer, Police Station Magarlod, District Dhamtari (Chhattisgarh)

---- Respondent

For Petitioners	Shri Prateek Sharma, Advocate
For Respondent/State	Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

15/06/2016

1. Petitioner No.1 is a minor and victim of sexual assault (rape). As a result of the forcible sexual intercourse she is carrying pregnancy of about 12 weeks and the Medical Termination of Pregnancy (MTP) being not permissible of her own, the same can only be done after the opinion of the medical experts, as required under the provisions of Section 3 (2) (b) of the Medical Termination of Pregnancy Act, 1971 ('the Act, 1971' in short).
2. The petitioners made a representation to the Superintendent of Police, Dhamtari, on 3-6-2016, however, for want of a committee as contemplated under the Medical Termination of Pregnancy Rules, 2003 ('the Rules, 2003' in short), such examination by the medical experts did not materialise.
3. Section 3 of the Act, 1971 makes provision as to when pregnancies may be terminated by registered medical practitioners. The said provision is reproduced hereunder for ready reference :

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 sub-section (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.

4. Admittedly, the petitioner No.1 is a rape victim, therefore, in terms of Explanation 1 to sub-section (2) of Section 3 there is a presumption that the pregnancy would constitute a grave injury to the mental health of the pregnant woman i.e. the petitioner No.1. When such is the legal presumption, her prayer for termination of pregnancy by the registered medical practitioner is required to be undertaken in terms of sub-section (2) of Section 3 of the Act, 1971.
5. Considering the grave urgency in the matter because the petitioner No.1's pregnancy is more than 12 weeks old, the writ petition is disposed of with a direction to the Chief Medical & Health Officer, Dhamtari, to constitute a team of two Doctors to perform medical examination of the petitioner No.1 so that the life of the petitioner No.1 is not put to risk.
6. The Chief Medical & Health Officer, Dhamtari, shall take the required steps within a period of 3 days from today and based upon the opinion of the team of medical experts, the pregnancy of the petitioner No.1 be terminated within the outer limit of 7 days from today.

7. Learned counsel appearing for the State shall inform the Collector, Dhamtari and the Chief Medical & Health Officer, Dhamtari, during the course of the day so as to comply with the aforestated direction of this Court forthwith.
8. Accordingly, the writ petition stands disposed of with the aforesaid observation.

Certified copy today.

Sd/-

Judge

Prashant Kumar Mishra

Gowri