

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL WRIT PETITION NO. 218 OF 2016

Sanjiwani w/o Sharad Pawar and another ...Petitioners

VERSUS

The State of Maharashtra & others ...Respondents

Shri A.N.Nagargoje, advocate for petitioners
Shri S.D.Ghayal, A.P.P. for respondent/State

CORAM : A.V.NIRGUDE
AND
INDIRA K.JAIN, JJ.
DATED : 18th February, 2016

ORDER :

1] As per the directions given on 16.2.2016 the Dean, Medical College and Hospital, Aurangabad arranged examination of the petitioner. He sent his report. Report is received. This report states the fetus with gestation of 23 weeks is suffering from congenital abnormality which is described as ventriculomegaly, meningomyelocele in the lumbosacral region, but the report does not indicate that petitioner would not suffer any danger to her life if pregnancy is continued. The report further informs that if the child is allowed to take birth the same is likely to survive but there is likelihood to have permanent neurological deficit with the child and therefore the child may not lead normal life. The report also expressed opinion that the fetus deserves to be terminated in the

interest of both mother and child. There is substantial risk of physical abnormalities in the fetus which would render the child seriously handicapped.

2] If we peruse the provisions of the Medical Termination of Pregnancy Act, 1971 (for short "the Act") we came across situations permitted by law for termination of pregnancy. Section 3 reads as under : -

" 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 I-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 II. -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 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 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. “

3] Section 5 makes an exception to Sections 3 and 4 to termination of such pregnancy is made permissible to save life of pregnant woman. Sections 3 and 5 read together do not allow anyone to terminate the pregnancy of the petitioner even though they are aware that the child that would be born would have serious defects and would be handicapped for the life. Section 3 which is quoted above provided clearly that in case a congenital defect is noticed within 12 weeks of pregnancy termination of such pregnancy would be permissible. Unfortunately for the petitioner she did not undergo sonography examination till she completed 23 weeks pregnancy.

4] On this subject there is a judgment of our court in case of **Dr.Nikhil Datar vs Union of India [2008 Vol.110 (9) Bom.L.R. 3293]**. Situation in that case was almost similar to the facts of this case. The court clearly held that the court utilizing powers under Article 226 of the Constitution of India would not permit termination of pregnancy after the prescribed period in Sections 3 and 5 of the Act.

If such permission is granted it would amount to legislate upon provisions of a statute. Since the statute does not permit termination after 20 weeks in case where the pregnant woman is not in danger, we are unable to exercise such powers. We are constrained to dismiss this petition.

5] The petition stands dismissed.

[INDIRA K.JAIN, J.]

[A.V.NIRGUDE, J.]

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