IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 769 of 2016

Date of Decision : January 15, 2016

Harjit Kaur .... Petitioner

vs.

State of Punjab and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. B. S. Bhalla, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. :

The facts in brief, which need to be noticed are that the petitioner, an unmarried girl of about 20 years, alleges repeated sexual assaults by Angrej Singh, Gurlal Singh and Hira Singh. She further alleges that due to the aforesaid acts, she became pregnant. With regard to the above allegations, the petitioner has lodged an FIR under Section 376-D IPC being FIR No. 93 dated 10.12.2015 in Police Station Chohla Sahib, District Tarn Taran.

After the lodging of the aforementioned FIR, through an

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application moved before the Judicial Magistrate Ist Class, Tarn Taran, the petitioner prayed that she be allowed to terminate her pregnancy. After relying upon the relevant provisions of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as – the Act), the same was dismissed, giving her a cause to approach this Court through the present petition.

I have heard learned counsel for the petitioner and perused record of the case with his able assistance.

It is undisputed that the Judicial Magistrate Ist Class, Tarn Taran, before dismissing the application filed by the petitioner, had sought a report from a Senior Medical Officer, Tarn Taran to the extent whether it would be medically feasible to order termination of the petitioner's pregnancy. As per the report of the Doctor, it was opined that as on 20.11.2015, the petitioner's pregnancy was of 24 weeks and it was not feasible, at that stage, to abort.

As on date, the petitioner is in her 32nd week of pregnancy. That being the admitted position, it would be now appropriate to refer to Section 3 of the Act, which 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*

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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*

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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.***"**

A perusal of the above quoted provision shows that pregnancy may be ordered to be terminated by a registered Medical Practitioner, if length of the same is between 12 weeks to 20 weeks and that too, after getting opinion of at least two Medical Practitioners.

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When the petitioner was in her 24th week of pregnancy, it was medically opined that since the pregnancy was in an advanced stage, it was not feasible to conduct the abortion. If that was the position, when the petitioner's pregnancy was of 24 weeks, today when she is in her 32nd week of pregnancy, no order with regard to termination of her pregnancy can be passed.

However, after referring to a Division Bench judgment of this Court in **Kavita vs. State of Haryana – 2015 (2) RCR (Criminal) 606** as also a Single Bench judgment of this Court in **Shewata (minor) vs. State of Haryana and others – 2015 (4) RCR (Criminal) 423**, the writ petition is disposed of with the direction to the Chief Medical Officer (CMO), Tarn Taran, who, though is not a party to the present petition, to personally supervise the pregnancy case of the petitioner and provide all possible medical assistance, as and when required by her or her family members, which would include appropriate psychiatric consultation or related assistance from that department, a private room, medicines etc. The expenditure to be incurred on such treatment of the petitioner would be reimbursed by the concerned department of the State of Punjab. It is made clear that the petitioner shall always be at liberty to approach this Court for any further relief, as and when required.

With these directions, the present petition is disposed of.

A copy of the order be sent to the Chief Medical Officer, Tarn

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Taran, Chief Secretary to Government of Punjab and Principal Secretary, Department of Health, Punjab, for immediate compliance.

(DEEPAK SIBAL)
JUDGE

January 15, 2016
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