

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5289 OF 2018

1. Ramesh s/o Tulshiram Rathod
age 38 years, occ. labour
r/o Dongargaon Tanda
Tq. Loha, Dist. Nanded

2. Sunita w/o Ramesh Rathod
age 35 years, occ. household
r/o as above.

Petitioners

Versus

1. The State of Maharashtra
Through Police Station
Malakoli, Tq. Loha
Dist. Nanded.

2. Civil Surgeon
Dr. Shankarrao Chavan Government College
& Medical Hospital, Nanded.

Respondents

Mr. G.G. Suryawanshi, advocate for petitioners.

Mr. A.B. Girase, G.P. for respondents.

CORAM : R.M.BORDE &

A. M. DHAVAL, JJ.

DATE : 11th JUNE, 2018

ORAL JUDGMENT : (Per R.M. Borde, J.)

1. Rule. Rule made returnable forthwith.

2. Heard finally with the consent of learned counsel for the respective parties.

3. Parents of unfortunate minor girl from rural area, victim of physical abuse have approached this Court seeking permission for

termination of pregnancy of their minor daughter (victim). The pregnancy carried by the minor victim is stated to be of about 21 to 23 weeks duration. The victim girl aged 15 years is stated to be carrying twin pregnancy of abovenoted duration. In order to substantiate the contention, the petitioners have placed on record the First Information Report lodged on 04.04.2018 by the father of the victim. It was revealed during the investigation that the victim minor girl has suffered physical abuse at the instance of the accused.

4. On presentation of instant petition, by order dated 06.06.2018, the victim was produced for medical examination before the Board constituted at Dr. Shankarrao Chavan Government Medical College and Hospital, Nanded. The Board consisted of Head of Department of OBGY, the Head of Department of Radiology, the Head of Department of General Medicine, the Head of Department of General Surgery and the Medical Superintendent. The Board though tendered opinion to this Court on 08.06.2018, it was found to be inconclusive and as such, by order dated 08.06.2018, the Board was directed to tender opinion on following points :

- (i) Whether the continuance of pregnancy would pose danger to the life of the minor pregnant woman.
- (ii) Whether the procedure to be carried out to terminate the pregnancy at this stage would pose danger to the life of pregnant woman.

(iii) Whether there are any deformities noticed in the foetus which would necessitate termination of pregnancy.

5. In pursuance to the revised directions issued by this Court on 08.06.2018, meeting of the Medical Board was held on 11.06.2018 at Medical Superintendent Office at Dr. Shankarrao Chavan Government Medical College and Hospital, Nanded. The Board has informed that the victim is carrying live-in pregnancy of around in case of TWIN (A) 21 weeks, 4 days / TWIN (B) 23 weeks 1 day. It is opined by the Senior Psychiatrist that the victim is suffering from reactive depression and suicidality. It is further opined that if the pregnancy is continued, it may aggravate her depression, suicidality and may cause permanent damage to her mental health. So far as answers to the points framed by the Court are concerned, it is informed by the Board thus :-

1) As pregnancy has arisen of sexual abuse and has twin pregnancy, possible complications as teenage pregnancy are :

- a) Anaemia
- b) Pre-eclampsia
- c) Eclampsia, HELLP, DIC, maternal death
- d) Antepartum haemorrhage
- e) Postpartum haemorrhage
- f) Post partum Psychosis.

2) The procedure to be carried out at this stage may cause incomplete abortion, haemorrhage, uterine perforation, sepsis and may require operative procedure (Hysterotomy)

3) As per ultrasonographic finding there is no evidence of any deformity noted in both fetuses.

As per World Health Organisation guidelines maternal mortality is higher in women living in rural areas and poor communities, also young teenagers and adolescents face high risk of complications as compared to other women.

Our opinion is -

Considering the risk of continuation of pregnancy in this case is more as compared to risk of termination of pregnancy at this stage so after due consideration and order by Honourable High Court pregnancy in this case can be terminated.

6. The Medical Termination of Pregnancy Act, 1971 provides for termination of pregnancy by registered medical practitioner. Sections 3, 4 and 5 of the Act are relevant for consideration. Sub-section (2) of Section 3 of the Act provides that subject to 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.

7. In the instant matter, it is reported that the pregnancy carried by the victim is of more than 20 weeks duration. However,

it has not been reported that the pregnancy would involve the risk to the life of the pregnant woman but would cause permanent damage to her mental health. Section 5 of the Act is relevant for consideration which provides that the provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

8. In the instant matter, termination of pregnancy is necessary to safeguard the mental health of the pregnant woman. The Division Bench of this Court at Bombay in the matter of Shaikh Ayesha Khatoon Vs. Union of India and others has held that the contingencies prescribed in section 3(2)(i) & (ii) shall be read while interpreting Section 5 of the Act and the ground referred to in the aforesaid provisions are inherent and shall be read in Section 5 of the Act. It is observed in paragraph no. 13 of the judgment thus :

13. It is further observed that ordinarily a pregnancy can be terminated only when a medical practitioner is satisfied that a 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 [as per Section 3(2)(b)(i) of the Act of 1971] or when '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' [as per Section 3(2)(b)(ii) of the Act of 1971]. It is true that Clauses

(i) & (ii) of sub-section 2(b) of Section 3 are attracted in the case where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks. However, as has been recorded above Section 5 permits termination of pregnancy by a registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. It shall also have to be construed that Section 5 brings within its ambit the provisions of Section 4 and so much of the provisions of sub-section (2) of Section 3 of the Act of 1971 except the limitation in respect of length of the pregnancy of 20 weeks as provided in sub-section (2)(b) of Section 3 of the Act of 1971. It would thus be logical to conclude that the contingencies referred in Clauses (i) & (ii) of sub-section 2(b) of Section 3 will have to be read in Section 5 of the Act of 1971 and it would be relevant to consider the threat perception and substantial risk involved if the child were to born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. The contingencies laid down in Clauses (i) & (ii) of sub-section 2(b) of Section 3 shall therefore equally apply to the request of a pregnant woman seeking permission to terminate the pregnancy beyond 20 weeks and accordingly Section 5(1) will have to be construed, to meet the object and purpose of enactment and to promote cause of justice.

9. In the matter of Sucheta Srivastava and another Vs. Chandigarh Administration reported in **2009(9) SCC 1**, it is observed that there is no doubt that a woman's right to make reproductive choice is also a dimension of personal liberty as understood under Article 21 of the Constitution of India. It is observed that there is no doubt that a woman's right to make

reproductive choice is also a dimension of personal liberty as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating.

10. In the instant matter, the pregnant minor girl is a victim of physical abuse and as such she has a choice and can take a decision as to whether to continue with such pregnancy which is a result of offence against her person. The freedom to make choice by the woman which is an integral part of personal liberty cannot be taken away. It shall also be taken into consideration that besides physical injury the, the legislature has widened the scope of the termination of pregnancy by including "a injury" to mental health of the pregnant woman. In the instant matter, though pregnancy is alleged to be a result of physical abuse in view of section 5 of the Act of 1971, the choice of victim of rape of terminating unwarranted pregnancy needs to be respected. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected.

11. Observations made by the Division Bench of this Court in Suo Motu Public Interest Litigation in the matter of **High Court on its own motion Vs. the State of Maharashtra** reported in **2017 Cri.L.J. 218** are relevant for consideration. It is observed in paragraph no. 13 of the judgment thus :

13. A woman irrespective of her marital status can be pregnant either by choice or it can be an unwanted pregnancy. To be pregnant is a natural phenomenon for which woman and man both are responsible. Wanted pregnancy is

shared equally, however, when it is an accident or unwanted, then the man may not be there to share the burden but it may only be the woman on whom the burden falls. Under such circumstances, a question arises why only a woman should suffer. There are social, financial and other aspects immediately attached to the pregnancy of the woman and if pregnancy of the woman and if pregnancy is unwanted, it can have serious repercussions. It undoubtedly affects her mental health. The law makers have taken care of helpless plight of a woman and have enacted Section 3(2)(b)(i) by incorporating the words "grave injury to her mental health". It is mandatory on the registered medical practitioner while forming opinion of necessity of termination of pregnancy to take into account whether it is injurious to her physical or mental health. While doing so, the woman's actual or reasonable foreseeable environment may be taken into account.

12. Learned counsel for petitioners states that the petitioners would like to complete the procedure of termination of pregnancy at Dr. Shankarrao Chavan College and Medical Hospital, Nanded. The Dean of the Dr. Shankarrao Chavan College and Medical Hospital, Nanded is directed to forthwith complete the procedure of termination of pregnancy under the team of medical experts. Two members of the team shall be experts in Obstetrics and Gynecology.

13. Since it has been informed that the pregnancy carried by the victim minor girl is as a result of physical abuse and complaint has already been lodged in that regard and the matter is under investigation, the Dean of Dr. Shankarrao Chavan College and Medical Hospital, Nanded is directed to preserve the tissue sample

and blood sample of the foetus for carrying out necessary medical tests including DNA, finger printing/mapping. The Investigating Officer conducting investigation in the matter shall ensure that the samples of tissues and blood etc. shall be forwarded to the Regional Forensic Laboratory, Aurangabad for DNA, Finger printing/mapping and for carrying necessary tests and the samples and report shall be preserved for the purpose of trial of the offence.

14. Rule is accordingly made absolute. No costs.

A. M. DHAVALÉ
JUDGE

R.M.BORDE
JUDGE

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