



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.07.2018
PRONOUNCED ON: 27.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.15194 of 2018

P.Murugan

... Petitioner

Vs.

1.The District Collector,
Sivagangai,
Sivagangai District.

2.The Dean,
Government Medical College,
Sivagangai District.

3.The Inspector of Police,
Singampunari Police Station,
Singampunari,
Sivagangai District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to grant permission to terminate the pregnancy medically to petitioner's minor daughter namely, Nivetha, by considering the petitioner's representation dated 25.06.2018 within a time limit framed by this Court.

For Petitioner : Mr.K.K.Samy

For Respondents : Mr.J.Gunaseelanmuthiah,
Additional Government Pleader.

ORDER

This writ petition has been filed seeking for a direction to the respondents to grant permission to terminate the pregnancy of the petitioner's minor daughter namely, Nivetha, through a medical procedure.

2.Heard Mr.K.K.Samy, learned counsel appearing for the petitioner and Mr.J.Gunaseelanmuthiah, learned Additional Government Pleader appearing for the respondents.

3.The learned counsel appearing for the petitioner submitted that the petitioner's daughter, namely, Nivetha



(hereinafter referred to as 'the victim') is a minor girl, who has been impregnated allegedly by one Manikandan, son of Ramasamy.

4.As per the complaint of the victim's father, the victim girl, who was kidnapped from their house on 28.03.2018, was secured and admitted to the Government Children's Home at Sivagangai, where she is now accommodated on the request of the Inspector of Police, Singampunari Police Station, Sivagangai District, the third respondent herein. The learned Principal District Munsif cum Judicial Magistrate, Karaikudi, has recorded a statement from the victim girl, under Section 164 Cr.P.C. in connection with the First Information Report in Crime No.25 of 2018, registered against the perpetrator for commission of various provisions of the Indian Penal Code and the POCSO Act, 2012.

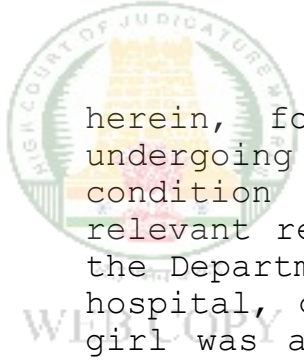
5.In the statement of the victim girl recorded on 30.05.2018 under Section 164 Cr.P.C. by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi, she had deposed that she was 17 years of age and that the perpetrator had allegedly married her inside a car and thereafter, he had physical relationship with her, on many occasions, through which, she had become pregnant. She had also deposed that she intended to continue her studies and therefore, wanted the pregnancy terminated.

6.In view of the prohibition under the Medical Termination of Pregnancy Act, 1971, the petitioner herein has sought for termination of his daughter's pregnancy before the first respondent herein and since his request was kept pending indefinitely, the present writ petition has been filed.

7.When this Court expressed its intention to send the girl for medical examination to ascertain the status and condition of her foetus for the purpose of termination of the pregnancy, the learned Additional Government Pleader appearing for the respondents produced a copy of the Medical Report received from the Department of Obstetrics and Gynaecology, Government Medical College and Hospital, Sivagangai, evidencing that the petitioner's daughter was pregnant and that she was physically fit for MTP.

8.The Medical Report does not disclose the stage of pregnancy of the victim girl. Under Section 3(2) of the Medical Termination of Pregnancy Act, 1971, the pregnancy may be terminated by a registered medical practitioner on obtaining the opinion of two registered medical practitioners, if the length of the pregnancy exceeds twelve weeks, but does not exceed twenty weeks. In the instant case, there is a possibility of the victim girl's pregnancy to be over and above twelve weeks and as such, it would be appropriate to refer the petitioner's daughter to two registered medical practitioners for obtaining their opinion.

<https://hcservices.ecourts.gov.in/hcservices/> 9.In order to ascertain the medical and mental condition of the victim, the victim girl was referred to the second respondent



herein, for obtaining an opinion on the medical condition for undergoing termination of pregnancy; condition of foetus; mental condition of the victim girl; age of the foetus; and any other relevant remarks. On examination, the Medical Officers attached to the Department of Obstetric and Gynaecology of the second respondent hospital, gave an opinion dated 23.07.2018 stating that the victim girl was aged about 16 years and that she was diagnosed of being pregnant with 14 to 15 weeks gestation. The opinion, also revealed that the victim was given psychiatric counselling and that she is willing for termination of pregnancy and that, she knew its consequences. Apart from this report, there is also an earlier opinion dated 15.05.2018, from the second respondent stating that the victim was physically fit for MTP.

10. Under Section 3 (1) of the Medical Termination of Pregnancy Act, 1971, when the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, such pregnancy is permissible for termination.

11. The victim girl, while giving her statement recorded under Section 164 Cr.P.C in connection with the case in Crime No.25 of 2018, on the file of the third respondent herein had stated that she does not want to give birth to her child. During the psychiatric counselling given before the Medical Officers attached to the second respondent on 23.07.2018, the victim had also expressed her willingness for termination of the pregnancy. Apart from that, when the victim girl was personally enquired in an in-camera proceedings by this Court on 16.07.2018, she had reiterated that she intended to terminate her pregnancy and that her statement was not under any coercion, compulsion or tutoring from any person.

12. Admittedly, the victim is a minor. There was no valid marriage between the victim girl and the accused. It is her statement that she intends to continue her studies and therefore, she wants the pregnancy to be terminated. Taking into account her welfare and the inconveniences and embarrassment that she might have to face if she gives birth, as well as the status of the child to be born, it would be appropriate to permit her to undergo the medical procedure.

13. Though certain statements have been made against the incident and the perpetrator leading to the pregnancy of the victim girl, I do not wish to render any findings on the same, since it is a subject matter of an investigation in Crime No.25 of 2018, on the file of the third respondent and would leave it to the law to take its own course.

14. In the light of the above observations, the termination of the victim girl's pregnancy will be performed by the Medical Officers of the second respondent hospital where she had undergone medical check up. The second respondent shall maintain a complete record with regard to the procedure performed on the victim girl for



termination of the pregnancy. Such an exercise shall be done within one week from the date of receipt of a copy of this order.

15. The writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar (AD-II)

/True copy/

Sub Assistant Registrar (CS-IV)

To

1. The District Collector,
Sivagangai,
Sivagangai District.
2. The Dean,
Government Medical College,
Sivagangai District.
3. The Inspector of Police,
Singampunari Police Station,
Singampunari,
Sivagangai District.

+1cc to Mr. K. K. Samy, Advocate, SR.No.75367.

+1cc to Special Government Pleader, SR.No.73569.

Order made in
Writ Petition (MD) No.15194 of 2018
27.07.2018

SMS/KRK

RAM/RP/SAR 4/27.07.2018/4P/6C