



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) No.17960 of 2018

B.Visalakshi

... Petitioner

Vs.

1.The District Collector
Trichy District, Trichy.

2.The Dean,
Trichy Government Hospital,
Trichy.

3.The Social Welfare Officer,
Trichy District, Trichy.

4.The Warden,
Children Rehabilitation Centre,
East Buliver Raod, (EB Road),
Trichy District, Trichy.

5.The Inspector of Police
All Women Police Station,
Musiri, Trichy.
Crime No.4 of 2018.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the 2nd respondent to terminate the unwanted pregnancy of petitioner's daughter minor B.Priya, D/o.Babu, aged 15 years, born on 07.05.2004, caused due to the crime committed against her, in Crime No.4 of 2018 dated 26.06.2018 under Section 5(j) (ii) and 6 of the Protection of Child from Sexual Offences Act 2012, by considering petitioner's representation dated 09.08.2018 within the period stipulated by this Court.

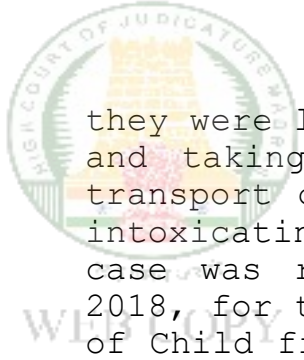
For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.B.Bhagavathi
Government Advocate

ORDER

This is a sordid story of the mother approaching this Court seeking for a direction to the Dean of Trichy Government Hospital to terminate the pregnancy of her daughter aged about 15 years.

2. It is the case of the petitioner that she and her husband are coolie workers and her daughter was studying 10th standard and



they were living in a hut. Both the parents used to go out for work and taking advantage of this, one Chinnaiya, who is working in transport corporation sexually assaulted the minor repeatedly after intoxicating her. As a result, the minor girl became pregnant. A case was registered against the said Chinnaiya in Crime No.4 of 2018, for the offences under Sections 5(j) (ii) and 6 of Protection of Child from Sexual Offences Act, 2012 and he has been remanded to judicial custody and the investigation is pending.

3. In the meantime, the mother wants this unwanted pregnancy to be terminated. The minor girl is a student and she has a future and therefore bearing child at such a young age, is not good for her health and for her future and the pregnancy itself has happened beyond her control.

4. The minor was referred to the Mahatma Gandhi Memorial Government Hospital on 26.06.2018 and she was treated in the said Hospital till 30.06.2018 and was discharged. The discharge summary is extracted hereunder:-

"Patient, a , 15 year old unmarried girl studying in 10th standard brought to causality by WPC.2938, S.Keerthiga Lakshmi, Musiri, AWPS.

Alleged h/o sexual assault by a known person, (56 Chinnaiya) 3 times, last contact 4 days back.

Impression:

SLIUG-Single Live Intra Utrine Gestation(11 to 12 weeks)."

5. The police while referring the minor to the Mahatma Gandhi Memorial Government Hospital had also sought for a sample of DNA for the purpose of investigation. However, since at that point of time, the mother was not willing to terminate the pregnancy, the Hospital has given a report as follows:-

"Patient is not willing for termination, hence sample for DNA cannot be sent from here.

Hence discharged at request.

Risk and consequences of continuation of pregnancy and inability to send sample for DNA analysis explained to both attended and the accompanying police constable (Mrs.Sudha 1047)."

6. The learned counsel for the petitioner also brought to the notice of the Court that the learned Judicial Magistrate No.VI, Trichirappalli issued summons for appearance on 19.07.2018. On that day, the parents of the minor appeared before the learned Judicial Magistrate and their statements were also recorded. While giving



statements before the learned Judicial Magistrate, the parents of the minor girl had also requested for the termination of the pregnancy.

7. The minor has now been taken care in the fourth respondent / Children Rehabilitation Centre. On 09.08.2018, a representation was made by the petitioner herein to the first respondent / The District Collector seeking for permission to terminate the pregnancy of her minor daughter. Simultaneously, the petitioner also approached the second respondent requesting for termination of pregnancy. At this point of time, the present writ petition has been filed seeking for a direction to the second respondent to terminate the pregnancy of the minor.

8. Immediately on filing of the writ petition, the learned Government Advocate had sought for the opinion of the Dean of the Mahatma Gandhi Memorial Government Hospital, with regard to the termination of pregnancy of the minor. The Dean of the Mahatma Gandhi Memorial Government Hospital by her letter dated 14.08.2018 had opined as follows:-

"We are obliged to perform medical termination of pregnancy under the Medical termination of pregnancy Act of 1997. If the pregnancy is less than 20 weeks of gestation. Samples will be taken for DNA test of both mother and conceptus (foetus and placenta) if ordered by the Court.

At that time of Examination on 26.06.2018 it was noted 11 to 12 weeks of pregnancy on 23.08.2018 20 weeks of pregnancy will be completed, which is the last date for legal termination of pregnancy."

9. Section 3 of the Medical Termination of Pregnancy Act 1971 provides as follows:-

"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 the 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.

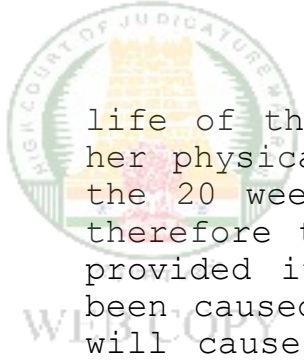
Explanation II- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the 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 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."

10. The Dean of the Mahatma Gandhi Memorial Government Hospital and the Head of Department of Obstetrics and Gynecology Department were also present before the Court in person. This Court has questioned them, as to the risk that is involved if the pregnancy of the minor girl is continued. Both the Doctors unanimously opined that the continuance of the pregnancy will involve a risk to the



life of the pregnant minor girl and it will cause grave injury to her physical and mental health. Both the Doctors also opined that the 20 weeks of pregnancy comes to an end only on 23.08.2018 and therefore the pregnancy of the minor girl can be terminated safely provided it is done immediately. In this case the pregnancy has been caused by rape and anguish that is caused by such a pregnancy will cause grave injury to the mental health of a pregnant minor girl.

11. Therefore, it is clear that the requirements of Section 3 of the Medical Termination of Pregnancy Act 1971 are fulfilled in this case.

12. This Court is satisfied based on the materials placed before this Court and also with regard to satisfying the requirements of the Medical Termination of Pregnancy Act 1971, that the pregnancy of the minor girl should be terminated at the earliest.

13. The minor girl is presently under the care of the fourth respondent/Children Rehabilitation Centre. The fifth respondent/The Inspector of Police, All Women Police Station, Musiri, Trichy, shall take the girl from the Children Rehabilitation Centre on 16.08.2018 at 10 a.m. and admit the girl to the Mahatma Gandhi Government Hospital. The second respondent / The Dean of the said Hospital is directed to make all arrangements for the termination of the pregnancy of the minor girl on the very same day.

14. Immediately, after the termination of pregnancy, samples will be taken for the DNA test of both the mother and conceptus (foetus and placenta) and the same should be handed over to the fifth respondent. The fifth respondent should thereafter send the sample to the forensic lab.

15. After the termination of pregnancy, the Mahatma Gandhi Memorial Government Hospital shall take care of the minor girl and permit her to stay the Hospital till she completely recovers.

16. After the minor girl is discharged from the hospital, after the termination of pregnancy, the minor girl shall be handed over to the parents, since she is a school going girl and she has to continue with her studies and go forward in life.

17. Accordingly, the Writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

- 1.The District Collector
Trichy District,
Trichy.
- 2.The Dean,
Trichy Government Hospital,
Trichy.
- 3.The Social Welfare Officer,
Trichy District,
Trichy.
- 4.The Warden,
Children Rehabilitation Centre,
East Buliver Raod, (EB Road),
Trichy District,
Trichy.
- 5.The Inspector of Police
All Women Police Station,
Musiri, Trichy.

+1CC to Mr.A.Haja Mohideen Advocate in SR.No.78720.

SJI

DS/RSK/SAR-4 :14.08.2018: 6P/7C

W.P. (MD) No.17960 of 2018
14.08.2018