

AFR

HIGH COURT OF CHHATTISGARH, BILASPURWPC No. 1988 of 2019

1. Nidhi Singh D/o Shiv Singh Aged About 20 Years R/o In Front of U.D.M. Kududand, Tahsil And District- Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home Affairs (Police), New Raipur, Mantralaya, New Raipur, Civil And Revenue District- Raipur, Chhattisgarh.
2. The Superintendent Of Police Bilaspur, District- Bilaspur, Chhattisgarh.
3. The Station House Officer Police Station Civil Lines, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.
4. Manish Shukla S/o Heeralal Shukla Aged About 28 Years R/o In Front Of Kali Mandir, Kududand, Tahsil And District- Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner

Shri Punit Ruparel, Advocate

For Respondent/State

Shri R.S. Baghel, Dy. Adv. General

Order On BoardByPrashant Kumar Mishra, J.21/06/2019

1. Petitioner is a victim of forcible sexual intercourse committed with her by the accused of Cr.No.0349/19 registered at Police Station Civil Lines, Bilaspur. As a result of the said forcible

sexual intercourse the petitioner is carrying pregnancy which she wants to abort, as the said pregnancy is causing her anguish and she does not want to have a child born out of a person who has ravished her without her consent and has subjected her to humility and embarrassment before the society.

2. This petition was filed on 6-6-2019 seeking a direction to the authorities to make available two registered medical practitioners for the purpose of termination of petitioner's pregnancy. This Court had summoned for a report as to the length of pregnancy and as to whether the same is legally terminable in accordance with the provisions contained in the Medical Termination of Pregnancy Act, 1971 (for short 'the MTP Act').
3. The Chief Medical & Health Officer, Bilaspur, has submitted a report dated 20-6-2019 stating that as on 19-6-2019 the petitioner was carrying pregnancy between 19th & 20th week and has completed 20 weeks of pregnancy on 20-6-2019 i.e. yesterday, therefore, it is not permissible to terminate the pregnancy in view of Section 3 (2) of the MTP Act.
4. I have heard learned counsel appearing for the parties and perused the record.
5. To deal with the prayer made in the writ petition, it would be necessary to refer to Section 3 of the MTP Act, which is extracted hereunder :

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 subsection (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 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 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.

6. A reading of the above extracted provision would discern that a pregnancy may be terminated by registered medical practitioners where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is of the opinion, formed in good faith, (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. It is also noteworthy to mention here that under 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.

7. Section 5 of the MTP Act provides for the situation when Sections 3 & 4 would have no application. According to this Section, 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. Thus, where the life of pregnant woman is at risk, termination of pregnancy would be permissible despite the provision contained in sub-section (2) of Section 3 of the MTP Act.
8. In *Suchita Srivastava and Another v Chandigarh Administration*¹ the Supreme Court held that there is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. The Supreme Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. It was observed as follows :

22. There is no doubt that a woman's right to make reproductive choices 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. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no

¹ (2009) 9 SCC 1

restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.....

9. In *Hallo Bi @ Halima v State of M.P. and Others*² the High Court of Madhya Pradesh has held that a victim of violent rape/forced sex cannot be forced to give birth to a child of a rapist.
10. The Supreme Court in *Meera Santosh Pal and Others v Union of India and Others*³ and *X and Others v Union of India and Others*⁴ followed the principles of law laid down by it in *Suchita Srivastava* (supra) and allowed the concerned woman therein to terminate pregnancy.
11. In the case at hand, there is no dispute amongst the appearing parties that the petitioner is victim of forcible sexual intercourse/rape. She is desirous of terminating the pregnancy as she does not want to give birth to the child of a rapist. It is her personal choice to terminate pregnancy which the Court must respect as it is a facet of her personal liberty as has been held by the Supreme Court in *Suchita Srivastava* (supra).
12. True it is that under sub-section (2) of Section 3 of the MTP Act the pregnancy can be terminated only when there is opinion of two registered medical practitioners, formed in

² 2013 (1) MPHT 451

³ (2017) 3 SCC 462

⁴ (2017) 5 SCC 458

good faith that the continuation of pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health and when the length of pregnancy does not exceed 20 weeks, but considering the fact that the writ petition itself was filed when pregnancy was less than 20 weeks and again when she was medically examined a day before i.e. on 19th June, 2019 it was still less than 20 weeks, I am of the considered opinion that the present is a fit case where this Court should allow the petitioner to terminate her pregnancy. Denying this relief to the petitioner would hound her for her entire life as it would be humiliating and embarrassing for her to give birth to a child of a rapist. The society would also not take the petitioner or her child properly and respectfully and thus the petitioner would lead a life of continuous mental anguish, which is not less than leading a miserable life and sometimes she may feel that it is better to die instead of leading life under continuous humiliation.

13. Applying the well settled principles of law and for the reasons stated hereinabove, this Court has no hesitation in allowing the writ petition with the following terms :

- The petitioner shall be admitted to the Chhattisgarh Institute of Medical Science [CIMS]. Bilaspur today or in the early hours of tomorrow and thereafter, the Superintendent, CIMS shall depute two registered medical practitioners i.e. two senior Doctors to cause termination of petitioner's pregnancy by obtaining her consent, which is otherwise available in form of filing of this petition.

- The DNA sample of the fetus shall be preserved for further reference as the criminal case against the accused is pending.

14. In the result, the writ petition is allowed in the above-stated terms.

15. Certified copy today.

Sd/-

Judge
Prashant Kumar Mishra

Gowri