

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2324 of 2019

Judgement reserved on : 25/07/2019

Judgement delivered on : 22/08/2019

Fuleshwari @ Anita Singh D/o Smt. Laxmaniya Singh Aged About 16 Years Minor, Through her Natural Guardian Mother Smt. Laxmaniya Singh Wife Motu Singh, Aged About 40 Years, R/o Jarhi (Urja Nagar), Ward No. 15, Post Jarhi, Police Station Bhatgaon, District Surajpur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. Secretary, State Of Chhattisgarh, Home Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur.
3. Superintendent of Police, Surajpur, District Surajpur Chhattisgarh.
4. Collector, Surajpur, District Surajpur Chhattisgarh.
5. Superintendent of Police, Balrampur, District Balrampur Chhattisgarh.
6. Child Welfare Committee, Surguja, Through The President, Office At Bal Nyayalay, Kanya Parisar Road, Ambikapur, District Surguja Chhattisgarh.
7. Child Welfare Committee, Surajpur, Through Its President, Officer At Ketka Road, Manpur, District Surajpur Chhattisgarh.
8. Chief Medical And Health Officer Surajpur, District Surajpur Chhattisgarh.
9. Dean, District Medical College / Hospital, Ambikapur, District Surguja Chhattisgarh.
10. Station House Officer, Police Chowki Bario, District Balrampur Chhattisgarh.

--- Respondents

For petitioner- Shri Keshav Prasad Gupta, Advocate.
For State- Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri

CAV Judgement

22/08/2019

Heard.

1. By the present petition termination of pregnancy has been sought for. The background has been stated that on 15/05/2019 in the city of Ambikapur a girl was found to be loitering around as such she was handed over to the Child Welfare Committee, Sarguja. After counseling was conducted the fact of sexual harassment by one accused surfaced, it was reported to the police and the case was registered. Subsequently, the child was handed over to her mother. When the issue was investigated, it revealed that the minor child came into contact with one person namely Mote and she was subjected to sexual assault whereby she conceived. Statement of the mother says that the girl was missing from past one year and it is found that she is pregnant and the girl is also not in a physical or mental state of health to give birth to the child. As such she was examined by the registered medical practitioner and on examination by the specialist OBS and Gynaecology, City Centre Sarguja doctor opined that pregnancy of the girl child was more than 20 weeks, therefore they were not authorized to terminate the pregnancy as it was more than 20 weeks.

2. Instant petition is by the mother being natural guardian of the girl and it is stated that her child below 18 years was subjected to rape and she is not willing to continue with the pregnancy because of stage of rape she passed through, as such termination has been sought for.

3. The Supreme Court in the case of ***Meera Santosh Pal & others Versus Union of India and others {(2017) 3 SCC 462}*** has reiterated the view taken in the case of ***Suchita Srivastava Vs. Chandigarh Admn {(2009) 9 SCC 1}*** and has observed thus in para 9, which is reproduced hereunder:-

“9. In *Suchita Srivastava v. Chandigarh Admn {(2009) 9 SCC 1}* a

Bench of three Judges held “a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under [Article 21](#) of the Constitution”. The Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. The Court 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 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”

4. Reading of section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act of 1971') makes it clear that where length of pregnancy does not exceed 20 weeks and not less than two registered medical practitioners have formed an opinion in good faith that the continuance of pregnancy would involve a risk to the life of pregnant woman or grave injury to her physical or mental health, the pregnancy can be terminated by a registered medical practitioner. This act of medical practitioner, if aforesaid conditions are satisfied, will not attract the penal provisions mentioned in Indian Penal Code. In other words, such registered medical practitioner shall not be guilty of any offence under the IPC or under any other law for the time being in force if conditions mentioned in Section 3 or Section 5 of the Act are satisfied.

5. Explanation 1 of the Act of 1971 purports that when 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. Sub section 4(a) of section 3 further contemplates that no pregnancy of a woman, who has not attained the age of eighteen years, for termination of the pregnancy consent has to

be obtained in writing from her guardian.

6. Instant petition has been preferred by the mother being natural guardian. The report from the Senior Consultant Doctor of the Government Hospital, Ambikapur shows that on examination they found pregnancy is more than 20 weeks and has expressed all danger in case of termination to the life of the mother. Consequently, the medical report do not support termination. Sub section 2 of Section 3 of the Act of 1971 puts a rider, normally the pregnancy could not be terminated when it exceeds 20 weeks, unless continuance of the pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health. Medical report in this case shows that there would be a risk of life of the pregnant woman if termination is done. Since allegation of rape has been made whether it constitute a grave injury to the mental health of pregnant woman as has been defined in sub section 2 of Section 3 of the Act of 1971 the guiding parameters are to be seen.

7. The expression grave injury to mental health which is used by the legislature cannot be put into a straight jacket formula. Sub section 2 of Section 3 of the Act of 1971 further makes reference of not only physical injury but also mental injury. When the termination has been sought after 20 weeks, necessarily the background has to be travelled which leads the court to look to the case diary of the criminal case of Crime No.41/2019. Perusal of the statement of the victim would show that she has made statement that because of the mother left the child she came into contact with Surendra Kumar and was with his company for considerable period of time and during such company she conceived. She was in the company on the assurance of marriage. Subsequently, when she was left over, she came in contact with the Child Welfare Committee and thereafter her mother was contacted. Thereafter, her mother started procedure for termination of pregnancy and eventually this petition is filed.

8. Counseling which took place in between the girl and the boy would show that they had a liking for each other. In the facts and circumstances of the case, taking into medical report and the case diary statement, in case of termination as has been projected risk will remain in respect of the life of the girl coupled with the fact background of the case diary statement, I am not inclined to allow this petition.

9. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE