

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2869 of 2019

1. Ms. X, D/o Ashok Chandrakar, Aged About 16 Years, R/o Kharora, Bemcha Mahasamund, Chhattisgarh, Since Minor Through Her Natural Guardian Mother Anita Chandrakar, W/o Ashok Chandrakar, Aged About 36 Years, R/o Kharora, Bemcha Mahasamund, Chhattisgarh.

2. Anita Chandrakar W/o Ashok Chandrakar Aged About 36 Years R/o Kharora, Bemcha Mahasamund, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

2. The Chief Medical Officer (C.M.O.)/Medical Board Of District Hospital, Mahasamund, Chhattisgarh.

3. Head Officer Of Department Gyanaecologist (H.O.D.)- Gynaic, District Hospital, Mhasamund, Chhattisgarh.

--- Respondents

For petitioners – Shri Utkal Pradhan, Advocate.
For State- Smt. Richa Shukla, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

27/08/2019

Heard.

1. Instant petition has been filed for termination of pregnancy of petitioner No.1 who is said to be minor aged about 16 years represented through her mother the petitioner No.2.

2. The facts as has been narrated is that the minor girl was allured and on some pretext she was subjected to rape by Kamlesh Kannoje who was neighbour and is married person. When the girl did not have her menstrual cycle she was subjected to check up wherein it was discovered that she had pregnancy. Subsequently, FIR was lodged and investigation was carried out and offence under section 376 IPC read with POCSO Act were registered.

3. Learned counsel for the petitioners would submit that the petitioner

No.1 being minor was subjected to rape by a married person who is neighbour and she cannot be compelled to give birth to a child which was due to rape as such termination of pregnancy may be ordered. He placed reliance on case laws reported in **(2009) 9 SCC 1 – Suchitra Srivastava vs. Chandigarh Administration and in (2017) 3 SCC 800 Independent Thought v. Union of India** and would submit that if the girl is minor then in such a case, the provisions of Protection of Children from Sexual Offences Act (POCSO) would be applicable. He also relied on case law reported in **(2018) 11 SCC 572 – Z v. State of Bihar** and would submit that when the child is a victim of a rape then in such a case, the pregnancy needs to be terminated as otherwise it would cause mental injury.

4. Learned State counsel would submit that as per the direction given by this court the certificate by the medical board has been obtained and according to the certificate of the medical board it shows that it is a case of unwanted pregnancy gestational age 17 weeks 01 days and besides she is having Sicklec cell disease in blood. Medical certificate from the medical board is placed on record.

5. Heard learned counsel for the parties.

6. 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."

7. 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.

8. 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.

9. The instant petition has been preferred by the mother of the victim being her natural guardian and the victim has also been made petitioner No.1 and the report which is called from the team of the two medical practitioner of Civil Surgeon, Main Hospital, Mahasamund shows that the patient is fit to undergo termination of pregnancy and the pregnancy is of

17 weeks 01 days.

10. Certificate by the medical board is reproduced hereunder:-

कार्यालय, सिविल सर्जन सह मुख्य अस्पताल अधीक्षक,
जिला चिकित्सालय महासमुन्द (छ.ग.)

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क्रमांक/मेडिकल बोर्ड/2019/1178

महासमुन्द, दिनांक 26/8/2019

Reference: In reference to Letter No.AG/CG/BSP/2019 Date-21/08/2019 &
Case No.WP(C) No.2869/2019 Ms. X & another v/s State of C.G. &
others.

CERTIFICATE BY MEDICAL BOARD

Certified that Ms. X 16yrs, resident of Village Kharora, Mahasamund has admitted on 26 Aug 2019 at District Hospital Mahasamund (C.G.) I.P.D. No.1351. She is a case of Unwanted Pregnancy Gestational Age 17 weeks 01 days (As by USG Dated 26/08/2019), for MTP. She has been Examined (Medical & Gynecological Check Up) & did Blood & Urine Investigation & Found Fit for MTP. She is having Sickcell Disease in Blood Investigation but her HB% is 12 gms.

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11. In the instant case pregnancy is said to be of 17 weeks 01 days. Besides the fact medical report shows that the victim is suffering with Sickcell disease, no risk has been shown in the medical certificate if the termination of pregnancy is carried out. Case diary statement was also called for in respect of the criminal case. Perusal of the statement would also show that victim was subjected to rape by her neighbour who was married person. Considering the medical report as also term of the pregnancy which has not exceeded 20 weeks, termination of pregnancy in respect of the petitioner No.1 minor girl is approved. She shall be admitted to the District Hospital, Mahasamund wherein the Superintendent shall

depute two registered medical practitioners i.e. two senior Doctors to cause termination of pregnancy of petitioner's No.1 by obtaining her consent and consent of her mother i.e. petitioner No.2. The DNA sample of the fetus shall also be taken for further evidence as criminal case against the accused is pending.

12. In the result, the writ petition is allowed to the above-stated terms.

Sd/-

(Goutam Bhaduri)

JUDGE