

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.8955 of 2019

Jacob

...Petitioner

Vs.

1.The District Collector,
Collectorate,
Tiruppur District, Tiruppur.

2.The Medical Officer,
Government Head Quarters Hospital,
Tiruppur District, Tiruppur.

3.The Inspector of Police,
Kangayam Police Station,
Kangayam, Tiruppur District.
(Crime No.133 of 2019)

4.The Inspector of Police,
All Women Police Station,
Kangayam, Tiruppur District.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus to direct the second respondent to refer the minor daughter Ranjitha of the petitioner before the second respondent and further direct the second respondent to act as per Section 3 of the Medical Termination of Pregnancy Act to abort the pregnancy of Minor daughter forthwith.

For Petitioner :Mr.P.Mathivanan

For Respondents:Mr.R.Govindasamy

Special Government Pleader

O R D E R

The petitioner seeks for a mandamus directing the second respondent to refer his minor daughter named in the writ petition before the second respondent to abort her pregnancy forthwith as per Section 3 of the Medical Termination of Pregnancy Act.

2. The case of the petitioner is as follows:

The petitioner is a Coolie and her daughter named in the writ petition was born on 25.10.2003 and is studying in IX standard in a private Girls Higher Secondary School, Chennimalai. On 24.02.2019, evening at 8 p.m., she went for shopping and thereafter, she did not return home. The petitioner gave a police complaint to the fourth respondent and a case in Crime No.133/2019 was registered for girl missing. One Abishek is resident of Komarapalayam village. He is a school drop out and lured the petitioner's daughter under the pretext of marriage. On 17.01.2019, while his daughter was going to school, the said person followed his daughter under the pretext of marriage and has taken her to his house and forcibly assaulted her sexually. He forcibly taken his daughter to Mysore and continuously sexually assaulted her. On account of the same, his minor daughter became pregnant. On coming to know about the police complaint, on 03.03.2019, the said person left the minor daughter at Kankeyam bus stand. Thereafter, on 03.03.2019, the third respondent altered the offence under Section 366 (A) IPC and Section 5(1)(j) (ii) read with Section 6 of POCSO Act, 2012. The said accused has been remanded to judicial custody and the petitioner's daughter was sent to medical examination. The petitioner reliably understand that the age of the womb was found to be 16 weeks. Since the petitioner's minor daughter is 14 years aged girl and IX standard student, bearing a child at such a young age is not good for her health and for her future. The petitioner's daughter was made pregnant on account of rape committed by the accused. If the pregnancy of his daughter is allowed to continue, it would affect her study and also will involve a risk to her life apart from causing grave injury to her physical and mental health. Therefore, the present writ petition is filed with the relief stated supra.

3. When the matter was taken up for admission on 26.03.2019, this Court, after considering the facts and circumstances and the submissions made by the learned counsel for the petitioner, passed an interim order, thereby directing the Medical Board constituted under the Medical Termination of Pregnancy Act, 1971, at the second respondent Government Headquarters Hospital to examine the petitioner's minor daughter and file a report before this Court by today (29.03.2019). Accordingly, the matter is listed today for further hearing.

4. Mr.R.Govindasamy, learned Special Government Pleader submitted that the petitioner's minor daughter was produced before the Medical Board at the second respondent hospital on 27.03.2019 and she was examined by the Experts. He produced the report of the second respondent hospital in a sealed cover. The said report reads as follows:

From
Dr.S.Somasundaram, MD
Hospital Superintendent (i/c)
Govt. Head Quarters Hospital,
Tiruppur.

To
Thiru R.Govindasamy,
Special Govt. Pleader,
High Court,
Chennai.

Ref.No.2270/FW/2019 Dated 28/03/2019

Sir,

Sub: WP No.8955 of 2019 Medical Examination report
as per Honourable High Court letter dated
27/03/2019- fax 11.24 a.m.

As per the order of the Honourable High Court, Chennai, we are submitting the medical examination report of minor girl Ranjitha D/o.Jacob, residing at 5/95, Kalleri street, Alambadi Village, Kangayam Taluk, Tiruppur District, who was admitted on 27/03/2019 at 11.15 a.m. IP No.10374 brought by Tamilselvi (WPC-1879) AWPS, Kangayam. On clinical examination Ranjitha is found to have a live 16 week old intrauterine pregnancy. She is thin built and weighs 39 kg and her BMI is 17.3. Her blood and urine parameters, ECG and Echo cardiogram are within normal limits. She has been examined by the physician and the Anaesthesiologist too and certified that she is fit for the Medical termination of pregnancy. The minor girl and the parents are willing to undergo the above said procedure. The expected complications and the risks involved have been explicitly explained to the girl and her parents. In spite of risks they are willing to undergo the procedure.

We have enclosed the copy of the informed consent obtained.

Hospital Superintendent (i/c)
Govt. Head Quarters Hospital
Tiruppur.

5.The petitioner is the father of the minor girl, who was alleged to have undergone the sexual assault by the accused person, against whom a criminal case is filed for the offences under Section 366 (A) IPC and Section 5(1)(j) (ii) read with Section 6 of POCSO Act, 2012. Needless to say that it is for the Criminal Court to go into the allegation and thereafter, give a finding in respect of the offences alleged to have been committed by the accused.

6. Now, the question before this Court is as to whether the petitioner's request for terminating the pregnancy of his minor daughter has to be considered.

7. There is no dispute to the fact that the petitioner's minor daughter is aged about 14 years and a IX standard student. It is stated that she is bearing pregnancy resulting out of rape

committed by the said accused. The minor daughter gave statement under Section 161(3) Cr.P.C. dated 03.03.2019, in line with the petitioner's contention before this Court. It is further seen from the report submitted by the second respondent hospital that she is found to have a live 16 week old intrauterine pregnancy and her blood and urine parameters, ECG and Echo cardiogram are within normal limits. The said report further states that she has been examined by the physician and the Anaesthesiologist, who certified that she is fit for Medical termination of pregnancy. It is further seen from the said report that the minor girl and the parents are willing to undergo the above said procedure and the expected complications and risks involved have been explicitly explained to the girl and her parents and inspite of risks, they are willing to undergo the procedure. Therefore, it is evident that the minor girl as well as her parents are willing to terminate the pregnancy, resulted out of the rape alleged to have been committed by the said accused.

8. Section 3 of the Medical Termination of Pregnancy Act, 1971 contemplates that a pregnancy may be terminated by a registered medical practitioner, where the length of the pregnancy exceeds 12 weeks but does not exceed 20 weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that 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. Explanation 1 to Section 3(2) of the Act further contemplates that 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.

9. Section 4 contemplates that no termination of pregnancy shall be made in accordance with the said Act at any place other than a hospital established or maintained by Government.

10. Since the Medical Board of the second respondent hospital has given the above report and since the petitioner's minor daughter as well as the petitioner have expressed their willingness to undergo the process of terminating the pregnancy and since it is stated specifically that continuance of pregnancy of the petitioner's minor daughter would cause grave injury to her physical and mental health, this Court is of the view that the relief sought for in this writ petition has to be granted and consequently, the pregnancy of the petitioner's minor daughter has to be terminated in accordance with the procedure contemplated under the Medical Termination Pregnancy Act.

11. Since the second respondent has already given a report as stated supra, the second respondent is directed to forthwith complete the procedure of termination of pregnancy of the petitioner's minor daughter, who has been examined on 27.03.2019 by the second respondent hospital, under the supervision of the team of Medical Experts, after obtaining consent in writing from the petitioner as well as his minor daughter. Two members of the team shall be experts in Obstetrics and Gynaecology. Since it is stated that the petitioner's minor daughter carries the pregnancy, as a result of an offence of rape and since the criminal case is already filed and investigation is going on, the second respondent hospital is directed to preserve tissue sample and blood sample of the foetus for carrying out necessary medical tests including DNA, finger printing/mapping. The Investigation Officer conducting investigation in the matter shall ensure that the samples of tissues and blood, etc., shall be forwarded to the Regional Forensic Laboratory, Coimbatore for DNA, finger printing/mapping and for carrying necessary tests and the samples and report shall be preserved for the purpose of trial of the offence. It is made further clear that the Doctors, who have put their opinions on record, shall have the immunity in the event of occurrence of any litigation arising out of the present petition.

The Print and Electronic Media is directed not to publish any news about the present case. The writ petition is disposed of with the above directions and observations. No costs.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

vri

To

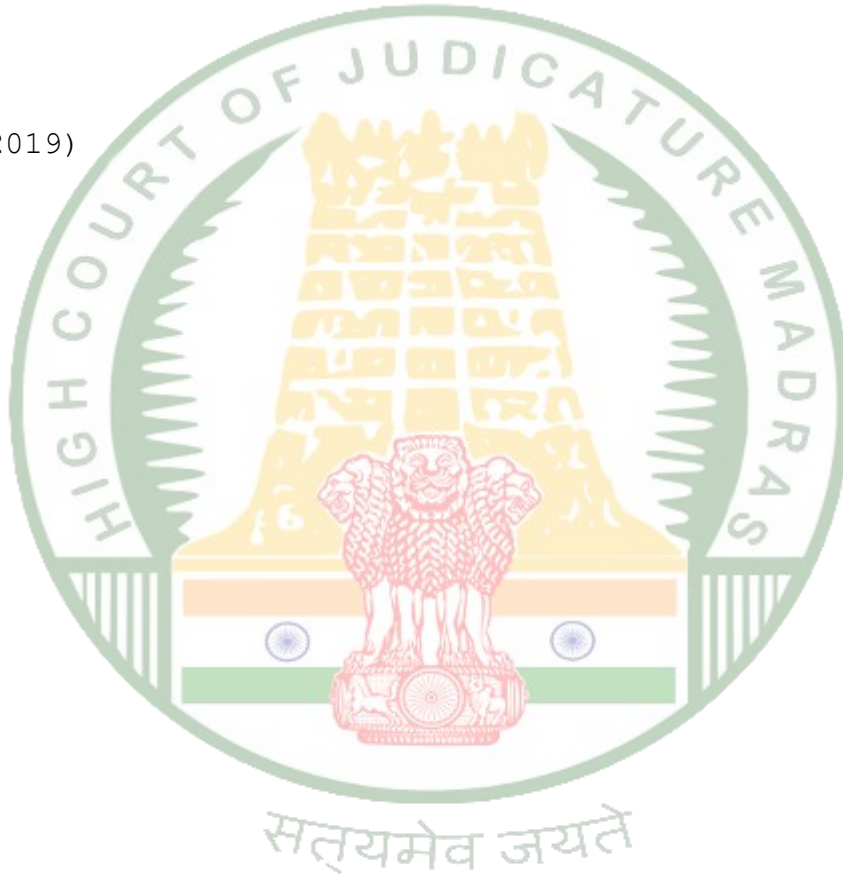
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+1 CC to Mr.P.Mathivanan, Advocate sr 30690.

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SS (CO)
SP (02/04/2019)



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