

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Cr1.O.P.No.14506 of 2019
and
Cr1.M.P.No.7043 of 2019

XXXXXX

..Petitioner

.Vs.

1. State rep.by
The Inspector of Police,
AWPS Kilpauk Police Station,
Chennai.
 - 2.The Project Officer,
Family Welfare,
Institute of Obstetrics and Gynaecology,
Egmore, Chennai.
 - 3.The State rep.by
The Inspector of Police,
SC BCID, Egmore, Chennai.
- ... Respondents

PRAYER : Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to transfer the investigation in Crime No.1 of 2019, from the file of the 1st respondent, AWPS, Kilpauk, to the file of the 3rd respondent-Inspector of Police, SCBCID, EGmore, Chennai.

For Petitioner : M/s.Suddha Ramalingam

For Respondents : M.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed seeking for transfer of investigation which is now pending on the file of the 1st respondent in Cr.No.1 of 2019. Along with this petition a miscellaneous petition was also filed seeking for a direction to the 2nd respondent to medically terminate the pregnancy of the petitioner.

2. The case of the petitioner is that she had relationship with one Naveeth Ahamed. He had stealthily taken certain videos and started pressurising the petitioner to yield to his demands. He started having regular sexual intercourse with the petitioner under threat. Therefore, a complaint came to be filed before the respondent Police by the mother of the petitioner and an FIR has been registered in Cr.No.1 of 2019 for an offence under Section 354, 354A, 354C IPC & Section 66E & 67A of the Information Technology Act.

3. Immediately after the registration of the FIR, the 164 statement of the petitioner and her mother was recorded before the learned Magistrate. In the said statement the victim girl had alleged that she was raped by the above said Naveeth Ahamed and as a result of the same, she became pregnant.

4. The petitioner wanted to terminate the pregnancy, and therefore she had requested the respondent Police to make arrangements for medical termination of pregnancy. The respondent Police did not take any steps and the petitioner got herself admitted before the 2nd respondent on 01.06.2019. Even though, the doctors initially agreed to conduct medical termination of pregnancy for the petitioner, they wanted to coordinate with the 1st respondent Police since the conceptus has to be sent for analysis to the Forensic Department. However, the petitioner was discharged from the hospital on 03.06.2019 without taking any decision. Left with no other alternative, the petitioner has approached this Court.

5. This Court directed the 1st respondent Police to take the petitioner to the Government Kasturba Gandhi Hospital for Women and Children and General Hospital, Chepauk, Triplicane, Chennai-600 005, by an order dated 07.06.2019, to get the petitioner medically assessed before undergoing the termination of pregnancy. However, things were not moving at the right pace and the same was brought to the notice of this Court.

6. This Court passed the following order on 12.06.2019.

"This Court by an order dated 07.06.2019 directed the petitioner to be produced before the Head of the Gynaecology Department, Government Kasturba Gandhi Hospital for Women and Children, Triplicane, Chennai to get the opinion regarding the termination of pregnancy sought for by the petitioner.

2. Pursuant to the orders passed by this Court, the petitioner was admitted in the hospital on 08.06.2019 and she was evaluated by the Doctors and it was found that the petitioner is carrying a fetus which is 8 to 10 weeks and

the Director of Social Obstetrics, Institute of Social Obstetrics and Govt. Kasturba Gandhi Hospital for Women and Children and General Hospital, Chepauk, Triplicane, Chennai-600 005 has written a letter dated 10.06.2019 to the Dean, Rajiv Gandhi Govt. General Hospital, Chennai-3 to the effect that the medical termination of pregnancy can be performed only by the Medical Board at the Rajiv Gandhi Govt. General Hospital. On the same day, the petitioner was also discharged and sent back home. Unfortunately, the respondent police did not follow up with the letter and produce the petitioner before the Dean of Rajiv Gandhi Govt. General Hospital till today.

3. There shall be a direction to the 1st respondent to immediately take the petitioner to the Dean, Rajiv Gandhi Govt. General Hospital, Chennai. The Dean of Rajiv Gandhi Govt. General Hospital is directed to admit the petitioner in the hospital tomorrow i.e on 13.06.2019 and consider the entire discharge summary prepared by the Institute of Social Obstetrics and Govt. Kasturba Gandhi Hospital for Women and Children and General Hospital, Triplicane, Chennai, and proceed further with the process of termination of pregnancy of the petitioner. The petitioner shall be kept in the hospital till she recovers from the operation and thereafter, shall be discharged. After the termination of the 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 1st respondent and thereafter, send the same to the Forensic Lab and get a report for the same.

4. Post this case for reporting compliance on 14.06.2019".

7. After the above order was passed, the Medical Board evaluated the petitioner and the medical termination of pregnancy was done on 17.06.2019. This was reported to this Court on 18.06.2019, and this Court passed the following order:

"The learned Additional Public Prosecutor submitted the report of the Director of Social Obstetrics of ISO and Government Kasturba Gandhi Hospital for Women.

2. The said report shows that the Medical

Board evaluated the petitioner and finding her to be physically and psychologically fit to undergo termination of pregnancy. The Medical Termination of Pregnancy was done on 17.06.2019. The conceptus has already been sent to the Forensic Laboratory through the respondent Police to get a report, as directed by this Court. The report is taken on file.

3. Post this case on 19.06.2019 for passing further orders".

8. Mrs.Sudha Ramalingam, the learned counsel for the petitioner submitted that in all cases involving medical termination of pregnancy, the victim should not be made to knock the doors of the Court, where the

pregnancy is below 20 weeks. The learned counsel by citing this case as a sample, submitted that there is no sensitivity in handling the victims and they are made to move from one hospital to another and no one is taking the responsibility. Therefore, the learned counsel for the petitioner submitted that some guidelines should be given by this Court to the Police as well as the Ministry of Health and Family Welfare, Government of India, to effectively handle the termination of pregnancy where the pregnancy does not exceed 20 weeks, without making the victim girl initiate proceedings before this Court for that purpose.

9. India is one of the few countries to legalise abortions as early as 1971. The Medical Termination of Pregnancy (MTP) Act, 1971 allows for termination of pregnancy for a broad range of conditions till 20 weeks of gestation. There is however an exception under Section (5) of the MTP Act wherein the restriction on length of pregnancy does not apply in case termination is required to save the life of the woman.

10. The Government of India noticed that in several cases the victim girls were made to knock the doors of the Court seeking for permission to terminate the pregnancy. Therefore, permanent Medical Boards were directed to be established across the country to assist in responding to urgent/immediate request for termination of pregnancy. The object behind such a move was to avoid delay in examination when a request for termination of pregnancy is received.

11. It will be relevant to extract Section 3 of the Medical Termination of Pregnancy Act, 1971.

"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 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 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 a 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 ⁴ [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".

12. The provisions of the Act do not confer or recognise any right on any person to cause an abortion or termination of pregnancy. Even a pregnant woman cannot terminate the pregnancy except under the circumstances set out in the Act. Section 3 (2) makes it very clear that a pregnancy can be terminated by a registered medical practitioner where the length of pregnancy does not exceed 12 weeks and in cases where the length of pregnancy exceeds 12 weeks, but it does not exceed 20 weeks, by not less than two registered medical practitioners, where they have formed an opinion in good faith that the continuance of the pregnancy would involve a risk of the life of the pregnant woman or of grave injury to her physical or mental health; or there is a substantial risk that if the child is born, it would suffer from such physical or mental abnormalities and will be seriously handicapped. The first explanation makes it clear that a pregnant woman who alleges that pregnancy was caused due to rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. If the pregnant woman is a minor, the registered medical practitioner must take care to get the consent of the guardian of the minor in writing. Therefore, the very provision itself makes it clear that till the length of pregnancy does not exceed 20 weeks, the termination of pregnancy can be done by medical practitioners after satisfying with the conditions imposed under Section 3 of the Act. There is no requirement to produce the victim girl before a Medical Board for that purpose.

13. The requirement to produce the victim girl before the Board arises only in cases where the length of pregnancy exceeds beyond 20 weeks of gestation.

14. It will be relevant to extract the proceedings of the Government of India dated 14.08.2017, in this regard.

"The Hon'ble Supreme Court has recently been approached with many petitions for late termination of pregnancy beyond 20 weeks. The Hon'ble Court has been deciding upon these cases on case-to-case basis based on the opinion of Medical Boards specially constituted for the purpose of state level permit medical institutes. The Solicitor General of India on behalf of the Court has requested the Ministry

of Health and Family Welfare that 'Central Government should ensure that because such cases of abortion/termination of pregnancy may require urgent/immediate action because of the life of the child in the womb/the mother, that a permanent Medical board should be formed and be in place in each district or atleast at Commissionerate so that people who need such help can easily be examined by the Medical Board and immediate/urgent action can be taken. Hence, it has been decided to establish one or more permanent Medical Boards in each state which will examine such MTP cases when referred from the Court and ensure urgent/immediate action.

The following are the broad guidelines for establishment of the Permanent Medical Board.

* The Medical Board may be established in one or more premier tertiary level Government Medical Institutes in each state.

*The Medical Board may consist of experts from Departments of Gynae & Obstetrics, Pediatrics, Radiology/Sonology, Cardiology, Pulmonology, Neurology, Genetics, Pathology, Administration etc.

*The actual composition and the locations of the Medical Boards may be decided by the States.

*Where opinion of Medical Board is sought by the Hon'ble Supreme Court/High Court/District Court in any case of MTP, the Medical Board will examine the case and submit the report to the concerned Court in time stipulated by the Court.

Hence all the States and UTs are requested to establish such Medical Boards as stated above immediately and to send a compliance report to Ms.Vandana Gurnani, Joint Secretary (RCH)".

15. Pursuant to the said directive from the Government of India, the Government of Tamil Nadu has constituted a permanent Medical Board both at Madurai and Chennai by its proceedings dated 16.04.2019. This permanent Medical Board will only examine medical termination of pregnancy cases where the term of pregnancy is beyond 20 weeks of gestation. This permanent Medical Board will examine the medical termination of pregnancy cases whenever referred from the High Court and ensure immediate action.

16. In the present case, the petitioner was taken to the Government Kasturba Gandhi Hospital for Women and Children and General Hospital, Triplicane, Chennai, on 08.06.2019 and the concerned doctor on examination of the petitioner found that the petitioner is 8 weeks pregnant. Therefore, the very same hospital could have conducted the termination of pregnancy without referring the petitioner to the Medical Board. However, due to the wrong understanding of the provisions of the Act and the orders of the Hon'ble Supreme Court, the girl was again sent to the Rajiv Gandhi Government General Hospital on 10.06.2019. This procedure adopted by the Government Kasturba Gandhi Hospital for Women and Children and General Hospital, Triplicane, Chennai, is unnecessary and they themselves could have done the termination of pregnancy.

17. The victim girl was made to move from one hospital after another right from 01.06.2019 onwards and ultimately the Medical Termination of Pregnancy was done only on 17.06.2019. In cases of this nature, the doctors and the Courts need to be more sensitive and should act fast since the victim girl is carrying a foetus, which keeps reminding her of the agony faced by her due to rape and every moment she suffers mental agony and depression due to the unwanted pregnancy that has been forced against her.

18. This situation should not happen again and the medical practitioners should be sensitized in this regard.

19. In all cases, where a victim girl suffers an unwanted pregnancy and where the length of pregnancy does not exceed 20 weeks, the victim girl need not be referred to the Medical Board and the termination of pregnancy can be done as per the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971. The victim girl should not be unnecessarily made to knock the doors of this Court.

20. Even in cases where the length of pregnancy has exceeded 20 weeks, the pregnancy can be terminated in accordance with Section 5(1) of the Medical Termination of Pregnancy Act, 1971, immediately to save the life of the pregnant woman and the medical practitioner forms such an opinion in good faith. In such cases the length of pregnancy will have no relevance and what will be relevant is only the life of the pregnant woman.

21. In all other cases where the length of pregnancy exceeds 20 weeks, the victim may approach the High Court seeking for termination of pregnancy and at which point of time, the High Court will refer the matter to the permanent Medical Board constituted by the Government of Tamil Nadu and which shall examine such cases and will ensure urgent/immediate action and

submit its report to the Court, based on it the Court can take a decision.

22. In all cases involving termination of pregnancy where a criminal case is pending, samples will be taken for DNA test of both mother and the conceptus (foetus and placenta) and it shall be sent to the Forensic Laboratory through the concerned Police and a report shall also be received from the Forensic Laboratory.

23. The various guidelines given by this Court at para 19 to 22 shall be strictly complied with by the Police and the medical practitioners and necessary circular shall be issued in this regard by the DGP of Police and the Health and Family Welfare Department, Government of Tamil Nadu immediately.

24. This Court does not want to transfer the investigation at this stage and the investigation conducted by the 1st respondent shall be monitored by the Assistant Commissioner of Police, Kilpauk and he shall ensure that the investigation progresses effectively.

This Criminal Original Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

KP

To

1. The Inspector of Police,
AWPS Kilpauk Police Station,
Chennai.
2. The Project Officer,
Family Welfare,
Institute of Obstetrics and Gynaecology,
Egmore, Chennai.
3. The Inspector of Police,
SC BCID, Egmore, Chennai.

4.The Public Prosecutor,
High Court of Madras,
Madras.

Copy To

1.The Director General of Police,
Chennai.

2.Assistant Commissioner of Police,
Kilpauk.

3.The Inspector General of Police
North Zone, Alandur, Chennai-10

4. The Inspector General of Police,
Central Zone, Subramaniyapuram,
Tiruchirappalli

5. The Inspector General of Police,
West Zone,
Race Course Road, Red Field,
Coimbatore.

7. The Joint Secretary (RCH) Government of India,
Department of Health and Family Welfare,
Ministry of Health and Family Welfare,
Government of India.

Crl.O.P.No.14506 of 2019

EV(CO)
GMY(26/07/2019)

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