



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.03.2019
CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

WEB COPY

W.P. (MD) No.5774 of 2019

A.Jeeva

... Petitioner

/Vs./

1.The District Child Protection Officer,
Department of Social Defence,
Government Children Home Campus,
Thanjavur - 613 007.

2.The Dean,
Government Raja Mirasdar Hospital,
Thanjavur - 613 001.

3.The Inspector of Police,
All Women Police Station,Vallam,
Thanjavur District.

... Respondents

Prayer: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to abort (Medically termination of Pregnancy) the 2 months 13 days pregnancy of the petitioner's daughter 15 years aged minor namely Sivaranjani on the basis of the report given by the second respondent vide Na.Ka.No.1164/General/2019 dated 13.02.2019.

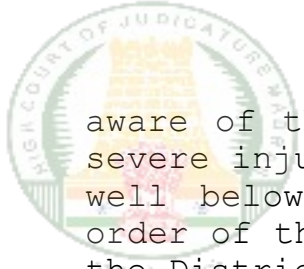
For Petitioner	: Mr.M.Sheik Abdullah
For Respondents	: Mrs.S.Bharathi
	Government Advocate (Crl. Side)

ORDER

The present petition is filed seeking medical termination of pregnancy of a minor girl aged about 15 years under the Medial Termination of Pregnancy Act, 1971.

2. It is alleged in the petition that the petitioner, a minor girl, even well to be termed as a child, was enticed by her neighbour and was forced to have intercourse on a promise of marriage. The child yielded to this man and in the process, she is now conceived 2 months and 15 days. A case in Crime No. 2 of 2019 is registered against the offender under Sections 5 and 6 of the Prevention of Children from Sexual Offences Act.

3. The learned counsel for the petitioner submits that when the petitioner's daughter was dragged into a sexual act, she was not



aware of the consequences and conception at 15 years constitutes a severe injury to her mental health as this girl is a minor child and well below her womanhood. The learned counsel has relied on the order of this Court in W.P.(MD)No.17960 of 2018 (In S.Visalakshi Vs. the District Collector, Trichy District, Trichy and four others).

4. Dr.D.Nithya, the Civil Assistant Surgeon attached to the Department of ONG, Government Mirasudar Hospital, Thanjavur has certified that the girl in question is physically not fit to deliver a baby, since her hip bones are not adequately grown. She has also indicated other possibility of potential injury to her re-productive organs.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl.side) appearing for the respondents, who concurred with the submission of the learned counsel for the petitioner.

6. Section 3 of the Medical Termination of Pregnancy Act 1971 provides as follows:-

"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 the 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 I- 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.



(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 consent in writing of her guardian.

7. Apart from the Doctor's opinion on the physiological condition of the petitioner, this Court also wants to consider the explanation (I) to Section 3 of the Medical Termination of Pregnancy Act, 1971. Even though the said provision clearly indicates that this is a case of rape, inasmuch as the petitioner is well below the age of consent even for 376 IPC, the whole concept of rape will be attracted. Therefore, the present case will fall under Explanation (1) of Section 3(2) of the said Act.

8. Taking an over all picture of this case and the medical opinion placed on record and also with regard to satisfying the requirements of the Medical Termination of Pregnancy Act 1971, this Court considers it as a fit case to order medical termination of the pregnancy of the petitioner's daughter. Accordingly, the second respondent is directed to medically terminate the 2 months and 15 days pregnancy of the petitioner's daughter at the earliest.

Sd/-

Assistant Registrar (T&P)

/ True Copy /

Sub Assistant Registrar (CS-I)

1. The District Child Protection Officer,
Department of Social Defence,
Government Children Home Campus,
Thanjavur - 613 007.



2.The Dean,
Government Raja Mirasdar Hospital,
Thanjavur - 613 001.

3.The Inspector of Police,
All Women Police Station,Vallam,
Thanjavur District.

+1 CC to M/s.M.SHEIK ABDULLAH, Advocate (SR-53870[F] dated 14/03/2019)

Order made in
W.P. (MD) No.5774 of 2019
13.03.2019

CM
ES/14.03.2019/4P/5C