



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2019

CORAM :

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THE HONOURABLE MR. JUSTICE N. SESHASAYEE

W.P. (MD) No. 6478 of 2019

A. Mupidathi

... Petitioner

/Vs./

1. The Chair Person,
Child Welfare Committee,
176, Mani Nagar,
Palayamkottai Road,
Opp. Rajaji Park, Thoothukudi.

2. The Dean,
Government Medical College Hospital,
Thoothukudi,

3. The Inspector of Police,
All Women Police Station,
Pudukkottai,
Thoothukudi 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 9 weeks pregnancy of the petitioner's minor daughter, aged about 14 years namely Muthulakshmi on the basis of the report given by the second respondent dated 2.3.2019.

For Petitioner : Mr. M. Sheik Abdullah

For Respondents : Mrs. S. Bharathi

Government Advocate (Crl. Side)

O R D E R

The present petition is filed seeking medical termination of pregnancy of a minor girl aged about 14 years under the Medical Termination of Pregnancy Act, 1971.

2. It is alleged in the petition that the petitioner's daughter, a minor girl, even well to be termed as a child, was sexually exploited by one Anabalan. She is now conceived 9 weeks. A case in Crime No. 1 of 2019 is registered against the offender under Sections 5(i) 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 14 years would constitute 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.5774 of 2019 dated 13.03.2019 and he has produced a copy of the said order.

4. Dr.Nephy T.S.Darrshuini, the Assistant Surgeon attached to the Department of Obsterics & Gynecology, Government Medical College & Hospital, Thoothukudi, has certified that medical termination of pregnancy (MTO) of the petitioner's daughter can be proceeded.

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 appearing 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,-

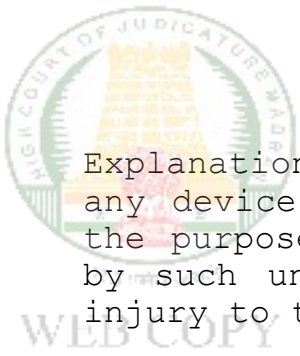
(a)where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(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.



Explanation II-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 of 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 [mentally ill person], shall be terminated except with 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."

7. Apart from the Doctor's opinion on the physiological condition of the petitioner's daughter, this Court also takes note of the Explanation-I to Section 3 of the Medical Termination of Pregnancy Act, 1971. Even though the said provision appears to confine its operation to cases of rape, inasmuch as the petitioner's daughter 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-I 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 9 weeks pregnancy of the petitioner's daughter at the earliest.

9. In the result, this petition is allowed.

Sd/-
Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar

To,

1. The Chair Person,
Child Welfare Committee,
176, Main Nagar,
Palayamkottai Road,



Opp.Rajaji Park,
Thoothukudi.

2.The Dean,
Government Medical College Hospital,
Thoothukudi,

3.The Inspector of Police,
All Women Police Station,
Pudukkottai,
Thoothukudi District.

4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT
MADURAI.

+1cc to Mr.M.Sheik Abdullah, Advocate, SR.No.55548

Order made in
W.P.(MD)No.6478 of 2019
20.03.2019

SP/21.03.2019/ 4P/6C