

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.10153 of 2020

V.Santhi
W/o L.Velan
M.G.R. Nagar Colony
Kamarajar Nagar Colony
Ammapettai, Salem District.

...Petitioner

Vs.

1.The Commissioner of Police
Salem City, Salem.

2.The Inspector of Police
All Women Police Station
Ammapettai, Salem District.

3.The Superintendent
Government Observation Home
District Court Complex
Salem.

....Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the 2nd respondent to produce my minor daughter Kousalya aged 16 years, who is the victim in crime No.13 of 2020 before the competent medical at Salem Government Hospital, to determine the termination of the pregnancy and direct the termination of the same.

For Petitioner : Mr.M.Devaraj

For Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

The prayer sought for in the present writ petition is to direct the 2nd respondent to produce my minor daughter Kousalya aged 16 years, who is the victim in crime No.13 of 2020 before the competent medical at Salem Government Hospital, to determine the termination of the pregnancy and direct the termination of the same.

2.The learned counsel for the petitioner would submit that the victim, aged about 16 years was found missing and as such her parents lodged a complaint before the respondent police and the same was registered in Crime No.13 of 2020, under "Girl Missing". Thereafter, the petitioner herein has come to understand that her daughter was in illegal custody of one Mani and they are residing at Sakthi Nagar, Masinaickenpatti. Further, it is informed by the petitioner herein that the said Mani was married her daughter and tied thali. Then the victim was secured from the accused. Thereby the victim refused to stay with her parents, viz the petitioner herein. Therefore, she was sent to the Home of the 3rd respondent herein and now, she is under the custody of the 3rd respondent. In the meanwhile, the petitioner herein has come to understand that due to the physical relationship between the victim and the accused person, victim, who is aged about 16 years got pregnant. Therefore, continuance of pregnancy of the victim would be detrimental for her health, since the body of the victim could not be sufficient to have delivery of a baby. He further submitted that the victim being a minor girl, she has to be taken care of by the natural guardian. Hence, he approached the Special Court for termination of pregnancy and it was rejected by the Court by proceedings dated 13.07.2020. Therefore, the petitioner herein has preferred the present Writ Petition.

3.Per contra, the learned Additional Public Prosecutor would submit that on the complaint lodged by the petitioner, the 2nd respondent police registered a case in Crime No.13 of 2020, under "Girl Missing". Thereafter the girl was secured and her statement was recorded before the jurisdictional Court. In her statement she refused to go with her parents and as such she was sent to the 3rd respondent home. Now, the offences have been altered under Section POCSO Act, against the accused person and got arrested and also remanded to judicial custody. In respect of termination of pregnancy is concerned, now the victim is at the stage of 14 weeks of fetus and she is under the custody of the 3rd respondent home and her pregnancy has been taken care of.

4.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

5.This Court by order dated 07.08.2020 directed the Doctors at Government Mohan Kumaramangalam Medical College Hospital, Salem, to examine the victim with regard to her pregnancy and also physical condition of the victim and submit a report.

Accordingly, the Doctors/Government Mohan Kumaramangalam Medical College Hospital, Salem, undertook the medical examination of the victim and submitted the report. Relevant paragraph is extracted hereunder:-

"1.She is a primigravida, teenage primigravida with 14 weeks of gestation with single live fetus in good condition.

2.She is physically evaluated and fit for medical termination of pregnancy.

3.Mother, Mrs.V.Santhi, the petitioner is willing for termination of pregnancy.

4.We, the committee interacted with the girl Ms.Kowsalya. She is not willing for termination of pregnancy. She wants to continue the pregnancy.

5.Ms.Kowsalya was interviewed and counselled by the psychiatrist about the physical and mental consequences of continuation of pregnancy and advised regarding the need to undergo MTP. The girl expressed her unwillingness to undergo MTP."

6.According to the Doctors, the fetus of the pregnant victim is 14 weeks old and she can withstand the pregnancy and also she can withstand with the termination of pregnancy. Now, the petitioner herein being the mother of the victim girl, wants to terminate the pregnancy of her daughter, who is aged about 16 years. But the victim girl refused to terminate her pregnancy and she wants to continue the same.

7.Under these circumstances, the petitioner, though she is the guardian of the minor girl, who is aged about 16 years, has absolutely no right to terminate the pregnancy of her minor daughter. Further, it is seen from the records that the petitioner refused to accept the love affair of the victim girl. Now, the victim also does not want to terminate her pregnancy. Hence, this Court cannot direct the Medical board to terminate the pregnancy of the minor girl. Therefore, the petition is devoid of merits. However, the 3rd respondent home is directed to take care of the victim girl, aged about 16 years, during her pregnancy with due care.

8.In the result, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

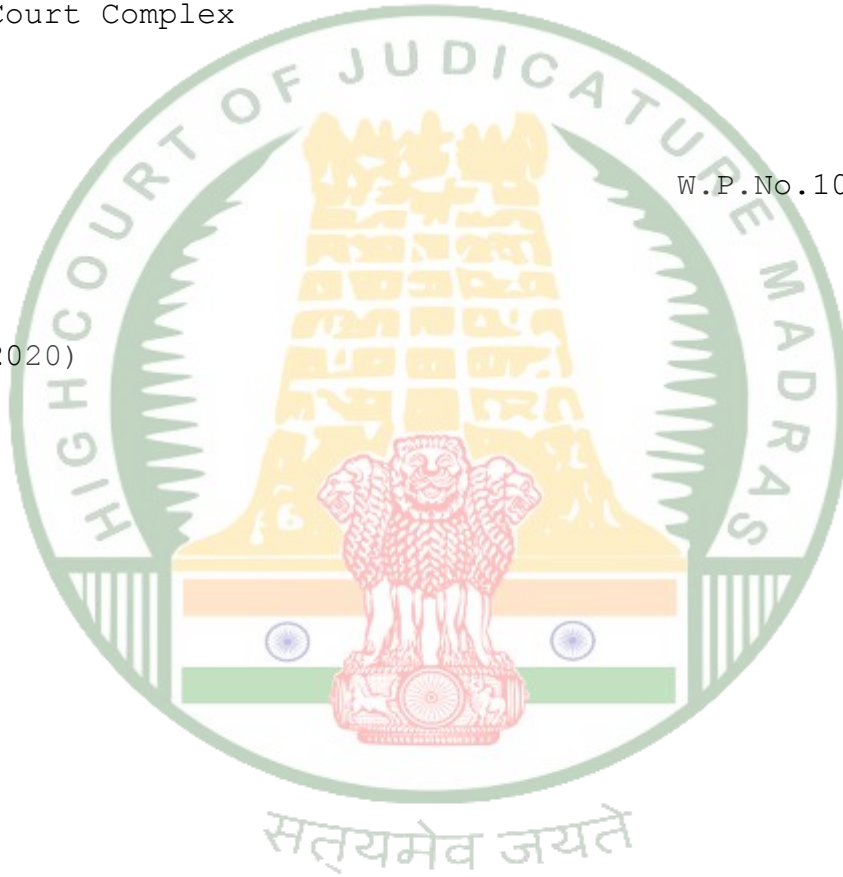
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SSV(CO)
RV(02/11/2020)



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