



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD)No.2184 of 2020

and

WMP (MD)No.1841 of 2020

WEB COPY

P.Savithiri

... Petitioner

Vs.

1.State of Tamil Nadu,
rep.by its Principal Secretary,
Home Department,
Fort St. George,
Chennai.

2.The District Collector,
Sivagangai District,
Sivagangai.

3.The Dean,
Government Medical College,
Sivagangai.

4.The Inspector of Police,
All Women Police Station,
Sivagangai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 3rd respondent to terminate the petitioner's daughter Sasikala pregnancy within the time framed by this Court.

For Petitioner	: Mr.J.John
For Respondents	: Mrs.J.Padmavathi Devi Special Government Pleader

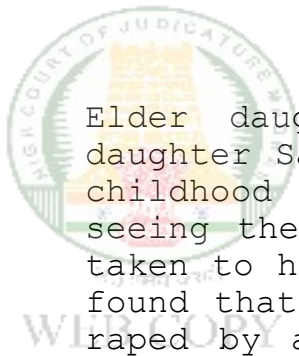
ORDER

This writ petition is filed seeking a direction to the 3rd respondent to terminate the pregnancy of the petitioner's daughter Sasikala.

2.The case of the petitioner in brief is as follows:

The petitioner is a shepherd, whose husband died in the month of May 2019, leaving behind him the petitioner and two daughters.

<https://hcservices.ecourts.gov.in/hcservices/>



Elder daughter viz., Uma got married already and the younger daughter Sasikala, aged about 26 years is a spastic person from her childhood and she was never allowed to go outside. While so, on seeing the unusual bulge of her stomach and body symptom, she was taken to hospital for medical check up on 24.01.2020, where, it was found that she was pregnant. On enquiry, it was found that she was raped by a neighbour one Kasi and based on a complaint given by Ganesan, an FIR was registered in Crime No.1 of 2020 for the offence under Section 376 IPC. In the above circumstances and in the interest of the victim, the petitioner prayed for termination of the illegal pregnancy of her daughter.

3.Earlier, when the matter came up for hearing on 04.02.2020, this Court passed an order directing the third respondent to file Medical Expert's report, which reads as follows:

"In this regard, it is necessary to constitute a Committee of Medical Experts to find out the possibility of termination of pregnancy and to file a detailed report before this Court. Admittedly, the pregnant woman is undergoing psychiatric treatment, as she is mentally unstable. It is stated that owing to the pregnancy and delivery of the baby, would be hazardous to the mother and the child. Therefore, the third respondent/The Dean, Government Medical College, Sivagangai is directed to constitute a Committee consisting of Medical Experts including the Gynecologist and file a detailed report before this Court about the age of the foetus and also the Medical Experts recommendation for medically terminating the Petitioner's daughter's pregnancy.

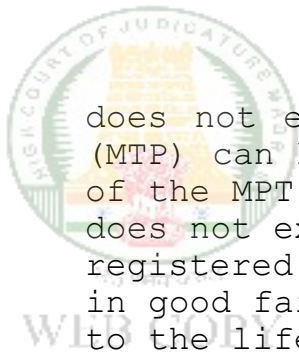
4.Post the matter on 12.02.2020, for filing such Medical Expert's report."

4.Today, the Certificate of Examination for Sexual Offence Cases dated 24.01.2020 has been produced along with the communication from the Dean of Medical College & Hospital, Sivagangai. On medical examination, it was opined as under:

"A case of (Miss.Sasikala, 31 years, mental retardation) unmarried, primi, 24 weeks of gestational age (5 months) pregnancy is confirmed. Complete physical examination and blood investigations done and she is fit for termination now."

5.As per the said report, the petitioner's daughter is 24 weeks of pregnancy and she is fit for termination now. In spite of knowing the consequences, the petitioner has approached this Court for medical termination of pregnancy of her daughter.

6.As per Section 3(2)(a) of the Medical Termination of Pregnancy Act, 1971 (in short MTP Act), if the length of pregnancy



does not exceed twelve weeks, the medical termination of pregnancy (MTP) can be done by a medical practitioner. As per Section 3(2) (b) of the MTP Act, if the length of pregnancy exceeds twelve weeks, but does not exceed twenty weeks, it should be done by not less than two registered Medical Practitioners and that in their opinion, formed in good faith, the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical and mental health and also there is a substantial risk that if the child were born, it would suffer from physical and mental abnormalities as to be seriously handicapped.

7. In the case on hand, the victim is having a foetus of 24 weeks which exceeds the termination period provided under Section 3 of the Act. One of the comments on the MTP Act, 1971 was that it failed to keep pace with advances in medical technology that allow for the removal of a foetus at a relatively advanced state of pregnancy. Considering this and few other remarks, recently, the Union Cabinet has approved the **Medical Termination of Pregnancy (MTP) (Amendment) Bill, 2020**. The Bill seeks to extend the termination of pregnancy period from 20 weeks to 24 weeks, making it easier for women to safely and legally terminate an unwanted pregnancy. But unfortunately, the Bill is pending before the parliament for its approval.

8. At this juncture, the learned counsel for the petitioner drawn the attention of the Court to the decision of the Hon'ble Supreme Court in the case of **Tapasya Umeshpisal V. Union of India and others, reported in (2018) 12 Supreme Court Cases, 57**, wherein it is held as follows:

"8. In these circumstances, it is difficult for us to refuse the permission to the petitioner to undergo medical termination of pregnancy. It is certain that the foetus if allowed to born, would have a limited life span with serious handicaps which cannot be avoided. It appears that the baby will certainly not grow into an adult.

9. In view of the above, we consider it appropriate in the interests of justice and particularly, to permit the petitioner to undergo medical termination of her pregnancy under the provisions of Medical Termination of Pregnancy Act, 1971. Mr. Ranjit Kumar, learned Solicitor General appearing for the respondents, has not opposed the petitioner's prayer on any ground, legal or medical. We order accordingly."

9. This Court has also dealt with a similar issue in the case of **A. Dakshinamurthy V. The State rep. by Secretary and others [W.P.No.957/2019]** and observed as follows:



7. As referred earlier, the mother herself is suffering from hypothyroidism and the Doctors have opined that it will be a risk continue the pregnancy. At this juncture, it is relevant to note that a Three-Judge Bench of the Hon'ble Apex Court in *Suchita Srivastava V. Chandigarh Admn.*, (2009) 9 SCC 1, held that a woman's right to make reproductive choices is also a dimension of personal liberty as understood under Article 21 of the Constitution. The following paragraph is usefully quoted from the said judgment :

22. There is no doubt that a woman's right to make reproductive choices is also a dimension of personal liberty as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods."

Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children."

Ultimately, this Court allowed the petitioner's daughter therein to undergo termination of pregnancy.

9(a).It is pertinent to point out that there should be a permanent Committee constituted for setting up a protocol procedure or permanent mechanism for expediting the termination of pregnancy involving rape victims and abnormal foetus cases.

10.Considering the decisions cited supra, the mental and physical condition of the victim and in order to respect the personal liberty of a woman, the welfare of the unborn and after perusal of the report submitted by the third respondent/Dean that the victim is fit for pregnancy termination, this Court permits the petitioner's daughter Sasikala to undergo the medical termination of her pregnancy. Accordingly, the procedure for termination of pregnancy of Sasikala/ daughter of the petitioner, shall be done by a team of medical experts, including the experts in Obstetrics and Gynecology under the supervision of the third respondent, after examining her physical fitness at the earliest. The third respondent is also directed to retain DNA of foetus for the purpose



11.The writ petition is allowed accordingly. No costs.
Consequently, WMP(MD)No.1841 of 2020 is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary,
Home Department,
Fort St. George,
Chennai.

2.The District Collector,
Sivagangai District,
Sivagangai.

3.The Dean,
The Government Medical College,
Sivagangai.

4.The Inspector of Police,
All Women Police Station,
Sivagangai.

+1 CC to M/s.J.JOHN, Advocate (SR-6214[F] dated 13/02/2020)

W.P. (MD) No.2184 of 2019
13.02.2020

KK/SAR/13.02.2020/5P-6C/