



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Thursday, the Twentieth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice PUSHPA SATHYANARAYANA

WMP(MD) No.2757 of 2020
IN
WP(MD) No.3252 of 2020

T.KALIAMMAL

... PETITIONER

Vs

- 1 THE STATE OF TAMIL NADU
REPRESENTED BY
THE PRINCIPAL SECRETARY,
THE HOME DEPARTMENT,
FORT ST.GEORGE, CHENNAI
- 2 THE SATE OF TAMIL NADU REPRESENTED BY
THE SECRETARY,
THE TAMIL NADU LEGAL SERVICE AUTHORITY,
NORTH ROAD, CHENNAI.
- 3 THE STATE OF TAMILNADU REPRESENTED BY
THE PRINCIPAL SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
FORT ST.GEORGE, CHENNAI.
- 4 THE DIRECTOR GENERAL OF POLICE,
DR.RADHAKRISHNAN SALAI, CHENNAI.
- 5 THE CHAIRMAN,
DISTRICT LEGAL SERVICE AUTHORITY,
DISTRICT COURT BUILDING, THOOTHUKUDI.
- 6 THE DISTRICT COLLECTOR,
THOOTHUKUDI DISTRICT.
- 7 THE SUPERINTENDENT OF POLICE,
THOOTHUKUDI DISTRICT.
- 8 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION KADAMBUR,
THOOTHUKUDI DISTRICT.



9 THE DEAN,
GOVERNMENT HOSPITAL AND MEDICAL COLLEGE,
THOOTHUKUDI DISTRICT.

... RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to direct the respondent no.9 to terminate the pregnancy of the petitioner daughter by name Ajitha and provide the necessary medical treatment in accordance with law.

Prayer in WP(MD). 3252/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to direct the respondents to provide fair and reasonable compensation for my daughter in accordance with law and pass

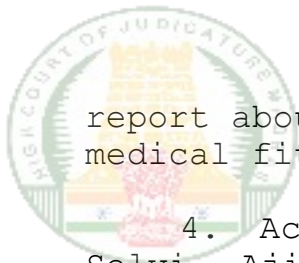
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.ALAGUMANI, Advocate for the petitioner and of M/S.J.PADMAVATHI DEVI, Special Government Pleader on behalf of the Respondents, the court made the following order:-

Sexual Assault is a broad based term which encompasses a wide range of sexual victimization including rape. This is an unfortunate case of one such victim . The petitioner herein is the mother of a minor daughter, who is aged 17 years and mentally challenged. The petitioner is an agricultural coolie and she had to go for work every day by leaving the physically and mentally challenged daughter at home. It is stated that one Ponraj, S/o Subbaiah, who is a neighbour of the petitioner, had taken advantage of the mental and physical inability of the minor girl, has sexually assaulted her by committing the act of rape. As the victim is mentally challenged, she cannot express the abuse she has suffered in the hands of the accused. It is stated in the affidavit that the minor girl has become pregnant and the foetus is more than 20 weeks old. A complaint has also been given before the All Women Police Station, Kadambur, Thoothukudi District and an F.I.R has been registered in Crime No.2 of 2020 dated 03.02.2020 under Sections 5(j)(ii), 5(k), 5(n) & 6 of the POCSO Act, 2012.

2. The petitioner has further stated that the victim is not only a minor girl but also mentally unstable and is incapable of delivering a child and even if the child is born, it would be fatal to both the child as well as to the petitioner's daughter. Hence, the petitioner has approached this Court seeking for compensation and also for a direction for medical termination of the pregnancy.

3. The matter was listed on 18.02.2020 on which date, this Court had directed the Dean, Government Hospital and Medical College, Thoothukudi District, the ninth respondent herein, to

<https://www.mca.gov.in/hospital/>



report about the status of the girl, age of the foetus and also the medical fitness of the girl for performing termination of pregnancy.

4. Accordingly, the examination report of the victim girl Selvi Ajitha is produced before this Court today in Ref No.282/04G/2020 dated 19.02.2020. The medical report is signed by Dr.M.Vanitha, Associate Professor, Department of Obstetrics and Gynecology, Thoothukudi Medical College Hospital, Thoothukudi, Dr.Bavani Devi, Associate Professor, Department of Obstetrics and Gynecology, Thoothukudi Medical College Hospital, Thoothukudi, and by Dr.R.Mercy Rodrigo, H.O.D, Department of Obstetrics and Gynecology, Thoothukudi Medical College Hospital, Thoothukudi.

5. The above team of doctors have examined the victim and stated that the patient is a mentally retarded girl and she was conscious at the time of examination and oriented of time and place. She is also said to be non-anemic and was referred for physical opinion, cardiologist opinion, psychiatrist opinion regarding any need of drug and also to conduct USG. The general examination is said to be good and the ultra-sonogram of abdomen report reads that the victim is in the 2nd trimester of pregnancy and her other parameters such as sugar are normal. The radiologist has given an opinion that single live intrauterine gestation of 23-24 weeks foetus growth is seen and is normal. The physicians also have given an opinion that the physical condition of the victim girl is normal and fit for performing medical termination of pregnancy and the psychiatric has mentioned that no psychiatric medication is needed for the present.

6. Thus, in the report, the team of Doctors in the Department of Obstetrics and Gynecology, Thoothukudi Medical College Hospital, Thoothukudi, has given an opinion that medical termination of pregnancy may be recommended and also termination of pregnancy at this stage requires induction of abortion with drugs and it may take 2 to 4 days for expulsion of foetus and institutional care is needed for termination.

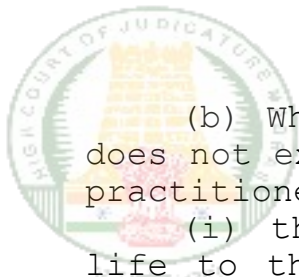
7. As the doctors have given an opinion that termination is required for the petitioner's minor daughter, whether medical termination can be ordered has to be considered now.

8. Section 3 of Medical Termination of Pregnancy Act, 1971 provides that pregnancy may be terminated by medical practitioners based on certain conditions and the said provision reads as follows :

3.When pregnancies may be terminated by registered medical practitioners- (1)

(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 of life to the pregnant women or of grave injury to her physical or mental health ; or and

(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.

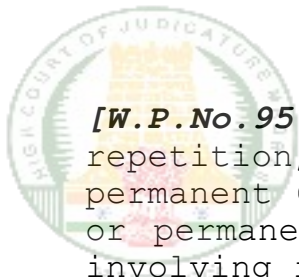
Explanation I- Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

9. As per the Medical Termination of Pregnancy Act, 1971, the consent of the pregnant woman for termination of pregnancy is required. However, in the case of the minor child, the consent of the minor child's guardian is required for termination. Section 3 of the Medical Termination of Pregnancy Act requires that the pregnancy may be terminated by a registered medical practitioner, where the length of the pregnancy does not exceed twelve weeks. In cases where the length of pregnancy exceeds 12 weeks but does not exceed twenty weeks, then termination of pregnancy may be proceeded, when not less than two registered medical practitioners are of the opinion formed in good faith that the continuance of the pregnancy would involve a risk to the life of the pregnant women or of grave injury to her physical or mental health, medical termination of pregnancy may be ordered.

10. In the present case, the petitioner is the mother of the minor rape victim, who has approached this Court for medical termination of the pregnancy for her daughter. In this case, as the mother who is the guardian of the minor child, has approached this Court for medical termination of pregnancy of her daughter, it should be taken to be her consent. As the victim is a minor child and also mentally unstable, her consent for the termination cannot be obtained. The radiologist report shows that the foetus would be 20-24 weeks old, which exceeds the termination period provided under Section 3 of the Medical Termination of Pregnancy Act. The said period was fixed at the time of enactment of the Statute. But, by now, due to advancements of the medical technology would result for the removal of the foetus at an advanced stage of pregnancy which is also approved by the Medical Termination of Pregnancy (MT) (Amendment) Bill, 2020. But such a Bill seeks to extend the termination of pregnancy period of 20 - 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.

11. This Court also dealt with a similar issue in the case of

<https://hccervicedesports1.gov.in/hccservicedesports1/> **A. Dakshinamurthy V. The State rep.by Secretary and others**



[W.P.No.957/2019]. and has passed an order. At the risk of repetition, 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.

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12. The Principal Secretary to the Government, Health and Family Welfare is directed to look into the above issue and take appropriate action. Considering the above facts and in view of the mental and physical conditions of the victim girl and in order to respect the personal liberty of women and considering the report submitted by the medical team of doctors, this Court permits the petitioner's daughter Selvi Ajitha to undergo medical termination of her pregnancy.

13. Accordingly, the following directions are issued:

(a) the procedure for medical termination of pregnancy shall be done by a team of medical experts including the experts who have given their medical opinion in this regard and under the supervision of the 9th respondent herein after performing the physical fitness at the earliest.

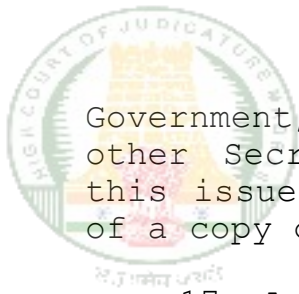
(b) The ninth respondent is also directed to retain the DNA of the foetus for the purpose of criminal trial.

(c) The eighth respondent is also directed to expedite the process of criminal trial in this regard at the earliest, as the petitioner is seeking for compensation for her minor child.

14. It is given to understand that there is no rehabilitation home for the women above the age of 18 years. In the given case, even though the victim is a minor under the care and protection of the mother, this kind of unfortunate incident has happened. Therefore, there is no guarantee that even after this medical termination of pregnancy is performed, she will get relieved of such kind of risk in future. Besides, it does not stop with the medical termination of pregnancy and institutional care is needed. This Court is also concerned with her post-natal care, especially, when the victim is a minor and a rape victim carrying a social stigma.

15. In this case, the minor girl is admitted in the home and the mother and the family are suffering in penury and hence, the post-natal care is to be extended to the girl. In this regard, the Principal District Judge, Thoothukudi, is directed to follow up the matter right from the date of termination of medical pregnancy being done, till the girl recovers fully and submit a report to this Court once in two weeks.

16. Given the above situation, the State Government is directed to look into the issue of establishing homes for Destitute women and also the victims of such heinous crimes, who are above the age of 18 years and vulnerable to such victimization, *de hors*, the fact that they are considered as major as per law. The Secretary to the



Government, Social Welfare Department, in consultation with the other Secretaries concerned, shall formulate policies to address this issue within a period of eight weeks from the date of receipt of a copy of this order.

17. Accordingly, the miscellaneous petition is closed. Post the main writ petition during the first week of March, 2020.

sd/-
20/02/2020

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/ /2020

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE PRINCIPAL SECRETARY,
STATE OF TAMIL NADU,
THE HOME DEPARTMENT,
FORT ST.GEORGE, CHENNAI
- 2 THE SECRETARY,
STATE OF TAMIL NADU,
THE TAMIL NADU LEGAL SERVICE AUTHORITY,
NORTH ROAD, CHENNAI.
- 3 THE PRINCIPAL SECRETARY,
THE STATE OF TAMILNADU,
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9 THE DEAN,
GOVERNMENT HOSPITAL AND MEDICAL COLLEGE,
THOOTHUKUDI DISTRICT.

COPY To:

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1) THE PRINCIPAL SECRETARY TO THE GOVERNMENT,
SOCIAL WELFARE DEPARTMENT,
FORT ST. GEORGE,
SECRETARIAT, CHENNAI-9.

2) THE PRINCIPAL DISTRICT JUDGE,
THOOTHUKUDI DISTRICT, THOOTHUKUDI.

+1. C.C. to M/S. R. ALAGUMANI Advocate SR.No.7439
+1 cc to Special Government Pleader, SR.No. 3789

ORDER
IN
WMP (MD) No.2757 of 2020
IN
WP (MD) No.3252 of 2020
Date :20/02/2020

STS
JM/VR/SAR 3/21.02.2020/7P/14C