

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

276

CWP-474-2024

Date of decision: 20.01.2024

AMANDEEP KAUR

.....Petitioner

VERSUS

THE POSTGRADUATE INSTITUTE OF MEDICAL EDUCATION
AND RESEARCH, CHANDIGARH

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Munish Raj Chaudhary, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The instant writ petition has been filed invoking writ jurisdiction of this Court for issuance of a writ in the nature of Mandamus directing the respondents to terminate the pregnancy of the petitioner in view of the Ultrasound Report dated 26.12.2023 (Annexure P-3).

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner is an unmarried girl of 30 years of age and working in stock marketing. The petitioner met one Nirmal Singh son of Kuldeep Singh, while working in a company as colleagues in the year 2018. At that time, Nirmal Singh son of Kuldeep Singh proposed the petitioner for getting married but the petitioner was not interested at

that juncture and both of them started connecting with each other as friends. Thereafter in May, 2023, the petitioner, and Nirmal Singh bumped into each other and Nirmal Singh again expressed his desire of getting married to the petitioner. The petitioner agreed and he established physical relations with the petitioner against her will under the pretext of solemnizing marriage. The petitioner became pregnant and Nirmal Singh started putting her off and avoiding her in one way or the other and ultimately stopped answering her calls and also switched off his mobile phone. The petitioner approached the family members of Nirmal Singh, who completely refused to cooperate with her and started threatening her by showing her photographs in compromising position with Nirmal Singh. Left with no option, the petitioner registered an FIR No. 143 dated 18.12.2023 for offence under Section 376 of the IPC, 1860 registered at Police Station Anaj Mandi, District Patiala. The petitioner approached the Boparai Ultrasound, Patiala on 26.12.2023. The above said Boparai Ultrasound prepared a report dated 26.12.2023 wherein it is mentioned that the petitioner was 12 weeks and 04 days pregnant.

3. Vide order dated 10.01.2024, the petitioner was directed to appear before the Medical Board of the Head of the Department of Obstetrics and Gynecology, Mata Kaushalya Government Hospital, Patiala.

4. Pursuant to the said order, the petitioner appeared before the Medical Board of the Head of the Department of Obstetrics and Gynecology, Mata Kaushalya Government Hospital, Patiala and subjected herself to the medical examination. A report of Board of

Directors has been handed over to the Court today and the same is taken on record as Mark 'A'. The relevant extract of the said report is as under:-

“Medical Termination of pregnancy of above patient can be done as per reports and as per MTP Act.”

5. She refers to provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 wherein pregnancies are permitted to be terminated by a Registered Medical Practitioner. Section 3 of the Medical Termination of Pregnancy Act, 1971 is extracted hereinafter below:-

“3. 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 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 1.-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 2.-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 to 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 4 [mentally ill person], shall be terminated except with the 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.”

6. I have heard the learned counsel(s) appearing on behalf of the respective parties.

7. The Hon'ble Supreme Court in the matter of “**X versus Principal Secretary Health and Family Welfare Department & Another**” reported as **2022 SCC Online SC 905**, has while considering the case regarding medical termination of pregnancy of an unmarried woman, held that:-

16. The fundamental principle of statutory interpretation is that the words of a statute must be read in

their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act and the intent of the legislature. Parliament by amending the MTP Act through Act 8 of 2021 intended to include unmarried women and single women within the ambit of the Act. This is evident from the replacement of the word ‘husband’ with ‘partner’ in Explanation I of Section 3(2) of the Act.

*17. Explanation 1 expressly contemplates a situation involving an unwanted pregnancy caused as a result of the failure of any device or method used by a **woman or her partner** for the purpose of limiting the number of children or preventing pregnancy. The Parliamentary intent, therefore, is clearly not to confine the beneficial provisions of the MTP Act only to a situation involving a matrimonial relationship. On the contrary, a reference to the expression “any woman or her partner” would indicate that a broad meaning and intent has been intended to be ascribed by Parliament. The statute has recognized the reproductive choice of a woman and her bodily integrity and autonomy. Both these rights embody the notion that a choice must inhere in a woman on whether or not to bear a child. In recognizing the right the legislature has not intended to make a distinction between a married and unmarried woman, in her ability to make a decision on whether or not to bear the child. These rights, it must be underscored, are in consonance with the provisions of Article 21 of the Constitution.*

18. In this case, the petitioner submits that she was deserted by her partner at the last stage in June 2022 causing her immense mental agony, trauma, and physical suffering. Excluding unmarried women and single women from the ambit of the statute goes against the purpose of the legislation. The Statement of Objects and Reasons of the MTP Act seeks to “liberalise certain existing provisions relating to termination of pregnancy ... (1) as a

health measure— when there is danger to the life or risk to physical or mental health of the woman”.

19. A comparison between the two provisions before and after the 2021 amendment is tabulated below:

MTP, 1971	MTP Amendment 2021
Explanation 2 : 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.	Explanation 1 : For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy , the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

20. The above table shows that the phrase ‘married woman’ was replaced by ‘any woman’ and the word ‘husband’ was replaced by ‘partner’. But evidently, there is a gap in the law : while Section 3 travels beyond conventional relationships based on marriage, Rule 3B of the MTP Rules does not envisage a situation involving unmarried women, but recognizes other categories of women such as divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape. There is no basis to deny unmarried women the right to medically terminate the pregnancy, when the same choice is available to other categories of women.

21. A woman's right to reproductive choice is an inseparable part of her personal liberty under Article 21 of Constitution. She has a sacrosanct right to bodily integrity. In Suchita Srivastava v.Chandigarh Administration, this Court has recognized that a woman's right to reproductive autonomy is a dimension of Article 21 of the Constitution:

“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.”

22. In Justice K.S. Puttaswamy (Retd.) v. Union of India, the decision of a woman to procreate or abstain from procreating has been recognized as a facet of her right to lead a life with dignity and the right to privacy under Article 21 of the Constitution:

“298. [p]rivacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised.”

23. The Bombay High Court in High Court on its Own Motion v.State of Maharashtra, observed as follows:

“14. A woman's decision to terminate a pregnancy

is not a frivolous one. Abortion is often the only way out of a very difficult situation for a woman. An abortion is a carefully considered decision taken by a woman who fears that the welfare of the child she already has, and of other members of the household that she is obliged to care for with limited financial and other resources, may be compromised by the birth of another child. These are decisions taken by responsible women who have few other options. They are women who would ideally have preferred to prevent an unwanted pregnancy, but were unable to do so. If a woman does not want to continue with the pregnancy, then forcing her to do so represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health”.

(Emphasis Supplied)

24. Denying an unmarried woman the right to a safe abortion violates her personal autonomy and freedom. Live-in relationships have been recognized by this Court. In S Khusboo v. Kanniammal, this Court observed that criminal law should not be weaponized to interfere with the domain of personal autonomy. It was observed:

“46. While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of

social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not co-extensive.”

(Emphasis Supplied)

8. Continuing with the current pregnancy is expected to bring considerable distress to the petitioner, serving as a constant reminder of the unfortunate situation she has endured. Additionally, given the petitioner's unmarried status, carrying on with the pregnancy could lead to significant psychological harm for both the petitioner and the potential child. The emotional toll of the pregnancy alone is enough to seriously impact the petitioner's mental well-being.

9. Forced into an unwanted pregnancy, a woman is likely to experience significant physical and emotional challenges. Dealing with the aftermath of such a pregnancy, even after childbirth, places an extra burden on the petitioner, affecting her ability to pursue other opportunities in life, such as employment and contributing to her family's income.

10. Resultantly, Medical Board of the Head of the Department of Obstetrics and Gynecology, Mata Kaushalya Government Hospital, Patiala is directed to take all appropriate and necessary steps needed to carry out the medical termination of the pregnancy of the petitioner upon satisfaction of all such necessary conditions as prescribed in law.

11. The petitioner shall approach the Medical College and/or the authorities of the said College on or before **24.01.2024** whereupon expeditious steps shall be taken for termination of the pregnancy in accordance with law.

12. The petitioner would be at liberty to espouse her financial status before the authorities concerned and be entitled to the benefit under the prevalent schemes in accordance with the rules.

13. A copy of this order be handed over to the learned counsel appearing on behalf of the respective parties under the signatures of the Bench Secretary.

Consequently, the present petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 20, 2024

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No