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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

280

CWP-18392-2024 (O&M).
Date of Decision: 13.08.2024.

SANDEEP KAUR

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Sukhjit Singh, Advocate, with
petitioner-in-person.

Mr. Aditya Sharda, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

1. The petitioner has approached this Court for seeking termination of pregnancy as per the provisions of the Medical Termination of Pregnancy Act, 1971.
2. Learned counsel for the petitioner argues that the marriage of the petitioner was solemnized with respondent No.7 on 27.01.2024 as per Sikh rites by performing Anand Karaj. Respondents No.7 to 9, however, were not happy with the dowry given at the time of marriage and started taunting and harassing the petitioner for bringing less dowry. In January 2024, the petitioner became pregnant from respondent No.7 (husband of the petitioner) who is currently working in Dubai, however, respondent No.7

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abandoned the petitioner at her parental house stating that family of the petitioner should bear all the expenses pertaining to delivery and in case a female child is born, he would not take the petitioner back to her matrimonial home. Respondent No.7 thereafter left for Dubai on 01.05.2024 without informing the petitioner or her family members about his departure. The address of respondent No.7 at Dubai is claimed to be not known to the petitioner. Ever since then, the respondent No.7 has not made any attempt to contact the petitioner and has not even shared his contact details with her. It is contended that the petitioner intends to terminate her marital relationship with respondent No.7 under the provisions of the Hindu Marriage Act, 1956 at an appropriate stage, however, considering the fact that the petitioner has been abandoned by respondent No.7 and the petition for divorce cannot be filed due to the statutory requirement of the mandatory waiting period (noticing that the Anand Karaj had been performed on 27.01.2024 itself and the mandatory statutory period of one year for filing a petition for divorce has not elapsed since then), the continuation of the pregnancy is likely to prejudice her future and career. It is contended that the provisions of the Medical Termination of Pregnancy Act, 1971 and the rules framed thereunder allow a woman to exercise her autonomy over her body including her decision to opt for delivery of a child. Since the petitioner is not happy with her marriage and has taken a conscious decision to annul her relationship with respondent No.7 by filing an appropriate petition for divorce in accordance with law, the birth of a child shall have serious repercussions on the future prospects of the petitioner and would fasten her

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with a liability for bringing up the child under social ostracism and harassment. The child so born would also be deprived of love of the father and grand-parents. It is contended that the petitioner is herself dependent upon her parents and the child shall bring along additional expenses for taking care and providing the necessary amenities and the education which the petitioner is not in a position to afford.

3. The petitioner had also appeared in person before this Court, as identified by the counsel representing the petitioner, wherein she reiterated her desire to seek not only the termination of pregnancy but also annulment of her marriage by filing an appropriate petition as prescribed under law.

4. Vide order date 05.08.2024, this Court had also directed the Mediation and Conciliation Centre of this Court to consult with the petitioner and to submit a report whether the petitioner voluntarily seeks termination of the pregnancy and/or whether she wishes to continue with her marriage. A report has been received by this Court from the Mediation and Conciliation Centre wherein it has been reported as under:-

“The aforementioned case has been received today. The mediation was held with the petitioner- Sandeep Kaur. She expressed her wish for the termination of pregnancy and further not to continue the relation with her husband- Pardeep Singh. This statement has been given by the petitioner without any pressure and with her free will.”

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5. The petitioner was thereafter directed to appear before the Civil Surgeon, Civil Hospital, Phase-6, S.A.S. Nagar, Mohali with a direction to the Medical Board to conduct medical examination of the petitioner and to submit a report. The report has been received which reads thus:-

“It was discussed that the MTP Board has given its opinion for the case of Sandeep Kaur D/o Lt. Sh. Rajwinder Singh R/o Vill Jhanjeri Tehsil Kharar Dist. Mohali has already been provided via letter no. AIMS/MTP/3 to the MS office dated 24.7.2024. Copy of the same is attached as Annexure 1

The case was reviewed again. Patient is a primigravida at 28 weeks 1 day period of gestation today (8/8/24), as per Last Menstrual period and examination. Ultrasound conducted at District Hospital on 8.8.2024, which is reported as normal for this period of gestation Annexure 2

It is reiterated that the Level 2 Ultrasound of fetus dated 4.6.2024 shows a single live fetus of 19 weeks 5 days with bilateral renal pelvis prominent, right 4 mm and left 4mm (Annexure 3). According to the Standard Treatment guidelines 2022 for antenatally detected hydronephrosis by India Academy of Pediatrics, this is classified as "Mild". The recommended management is "Serial ultrasound every 4-6 weeks" (Annexure 4).

MTP Board is of the unanimous opinion that since the period of gestation of this patient has crossed 24 weeks, which is the maximum permissible age for Medical Termination of

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Pregnancy, with no substantial foetal anomaly, as per the MTP Amendment Act (Annexure 5), MTP is NOT recommended.”

6. The MTP Board has not recommended termination of pregnancy as the foetus is normal and has crossed 24 weeks which is the maximum permissible limit for termination for pregnancy.

7. Thus the process was issued whereupon Mr. Lakshay Bector, Advocate, has appeared on behalf of respondents No.7 to 9 and he has also filed his power of attorney on behalf of respondent No.9. He contends that the allegations levelled against the respondents are incorrect and that they are always ready and willing to take the petitioner in the family and that there had been no demand of any nature whatsoever and no cruelty was meted out to the petitioner. He further contends that even though the respondents No.7 to 9 have no objection to the decision of the petitioner for seeking termination of the pregnancy, however, he also has instructions to state that in the event of petitioner taking a decision to give birth to the child, they are willing to take and discharge all responsibilities with respect to the child.

8. The said proposal was put to the petitioner who is present-in-person, however, she has remained adamant that she does not want to give birth to the child as she does not trust that the child will be brought up in an appropriate manner by the said respondents and in any case, given the psychological and sociological circumstances of the petitioner, she does not intend to give birth to the child under the circumstances where the family is

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a disintegrated family and being brought up in the absence of any natural love and care of either of the parents.

9. I have heard the learned counsel for the respective parties and have also gone through the documents appended along with the present petition with their able assistance

10. Before proceeding further, it would be relevant to refer to Section 3 of the Medical Termination of Pregnancy Act, 1971 wherein pregnancies are permitted to be terminated by a Registered Medical Practitioner. The same 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 twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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

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- (ii) *there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.*

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.*

Explanation 2 - *For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.*

(2-A) *The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.*

(2-B) *The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.*

(2-C) *Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.*

(2-D) *The Medical Board shall consist of the following, namely—*

- (a) a Gynaecologist;*
- (b) a Paediatrician;*

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- (c) *a Radiologist or Sonologist; and*
- (d) *such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.]*
- (3) *In determining whether the continuance of 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 reasonably 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 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.”*

11. It would also be necessary to refer to the provisions Section 3-B (a) and (c) of The Medical Termination of Pregnancy Rules, 2003, which read thus:

- “3-B Women eligible for termination of pregnancy up to twenty-four weeks –***
- The following categories of women shall be considered eligible for termination of pregnancy under Clause (b) of Sub-Section (2) Section 3 of the Act, for a period of upto twenty four weeks, namely-*
- (a) ***Survivors of sexual assault or rape or incest;***
 - (b) xxxxxxxxxxxxx
 - (c) ***change of marital status during the ongoing pregnancy (widowhood and divorce);***
 - (d) xxxxxxxxxxxxx
 - (e) xxxxxxxxxxxxx

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- (f) xxxxxxxxxxxx
(g) xxxxxxxxxxxx”

12. The Hon'ble Supreme Court of India in the matter of **“Sarmistha Chakraborty & Another versus Union of India Secretary & Others” decided on 03.07.2017, reported as (2018) 13 SCC 339**, has held that “the right of a woman to have a reproductive choice is an insegregable part of her personal liberty, as envisaged under Article 21 of the Constitution of India. She has a sacrosanct right to have her bodily integrity”.

13. Change of ‘marital status’ during an ongoing pregnancy is a concept which needs to be understood in true spirit. However, change of status should not be construed as an absolute change leading to severance of the status due to culmination of the divorce or widowhood. A circumstance where a woman is restrained from institution of a petition for divorce due to minimum waiting period, but has become pregnant and has decided to seek annulment of her marriage, cannot be a ground to put her to a disadvantageous position. She is mentally and psychologically already at a level where marital status is determined to change, but for the statutory bar. The circumstances which exist for a woman who succeeded in divorce is no different from a woman who is awaiting a divorce.

14. The petitioner has reiterated her intent to seek annulment of marriage again and again before different authorities as well as before this Court.

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15. Taking into consideration the fact that the petitioner has been abandoned by her husband at her parental house, who has left for Dubai on 01.05.2024 without informing her and thereafter, has not made any attempt to contact the petitioner or her family members; that the petitioner herself is dependent on her parents and it is not possible for her to bear the additional expenses for taking care and providing the necessary amenities and the education; that the petitioner has taken a conscious decision to get her marriage annulled by filing a petition for divorce in accordance with law after the statutory period of one year has elapsed and also that respondents No.7 to 9 have no objection to termination of pregnancy, the present writ petition is allowed.

16. The petitioner may, if so advised, appear before respondent No.2-Civil Surgeon, Civil Hospital, Phase 6, S.A.S. Nagar, Mohali on or before 16.08.2024 and in case she is also ready and willing to undergo Medical Termination of Pregnancy, the said respondent shall undertake the necessary medical procedures in accordance with law and terminate the pregnancy.

17. The petition is accordingly allowed.

18. A copy of the order be given to the learned counsel for the petitioner under the signatures of the Bench Secretary.

August 13, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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