

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1160 OF 2025

Mrs. XYZPetitioner

Versus

Union of India and Anr.Respondents

Mr. Mateen Shaikh a/w. Mr. Suresh Jadhav, Ms. Muskan Shaikh,
Ms. Manisha Khawade and Mr. Parvez Inamdaar for the Petitioner.
Ms. Purnima Awasthi for Respondent Nos.1 and 3.
Ms. M.P. Thakur, AGP for Respondent No.2.
Mr. Pruthviraj Bangar a/w. Mr. Gaurav Kalekar for Respondent
No.4.

CORAM : RAVINDRA V. GHUGE &
PRAVIN S. PATIL, JJ.
DATE : 27th JANUARY, 2025

P.C. :-

1. On 23rd January, 2025, we had passed the following
order :

1. The Applicant got married on 4th May, 2023. Now, she is pregnant and the foetus is around 18/19 weeks old. The only grievance put forth by the Petitioner/wife is that her husband keeps on taunting her that he is in love with another woman, he did not intend to marry the Petitioner and the child in the womb is not on account of his relationship. On the basis of such a bald allegations, the Petitioner desires to abort the child.

2. Prima facie, we are not convinced.

3. The Petitioner desires to add the husband as Respondent No.4. Addition with proper postal

address be carried out forthwith.

4. Issue notice to the Respondents, returnable on 27th January, 2025, at 2.30 p.m. The learned AGP waives service of notice on behalf of Respondent No.2, State. Ms. Purnima Awasthi, the learned Advocate, waives service of notice on behalf of Respondent Nos.1 and 3.

5. Hamdast granted to serve Respondent No.4. Besides Court service, notice be sent on the cell number of the husband, vide a WhatsApp message.

6. The husband is also at liberty to appear through V.C. mode, if he is unable to appear physically in the Court.

2. The husband, added Respondent, has tendered an affidavit dated 27th January, 2025 (27 pages). They are loosely paginated as page nos.1 to 27. The original affidavit compilation is taken on record and marked as 'X-1' for identification. In paragraphs 6 to 8 of this affidavit, the husband has mentioned as under :

6. I say that, I have never denied the paternity of the unborn child conceived by the petitioner. I categorically state that I am ready and willing to take care of the child conceived by the petitioner. I accept the paternity of the child and denies the baseless allegations made by the Petitioner regarding denial of paternity. I emphasizes that I have an equal and vested right over the unborn child. The decision to terminate the pregnancy cannot be taken unilaterally by the Petitioner,

particularly when I am fully willing to take responsibility for both the child and the Petitioner. I say that, the termination of the pregnancy on frivolous and fabricated grounds would defeat the purpose and object of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred as MTP Act).

7. I say that, my parents and I have made numerous efforts to reconcile with the Petitioner including Tantamukti Committee and the Women's Commission, all in an attempt to preserve my matrimonial relationship. However, the Petitioner and her family have been uncooperative and have refused to resolve the differences amicably.

8. I say that, the length of the pregnancy has already exceeded 20 weeks, as admitted by the Petitioner in the petition. Under Section 3(2)(b) of the MTP Act, termination of pregnancy is permissible up to 24 weeks for certain categories of women i.e, Rape survivors, Minors, Change in marital status during the ongoing pregnancy (widowhood and divorce), Women with physical disability, Foetal malformation where continuation of the pregnancy poses a grave risk to the life of the woman or the foetus. No such risk has been demonstrated in the present case.

3. The Petitioner (wife of added Respondent No.4), has addressed us in Marathi language through the video conferencing mode. We have, therefore, conducted the oral hearing in this matter in Marathi so as to enable both the litigating parties to understand the discussion going on in this matter. Both the learned Advocates

for the Petitioner and the Husband have also addressed us in Marathi.

4. The Petitioner wife had certain reservations about the behaviour and conduct of the husband. In the light of her contentions, the husband has filed one more affidavit dated 27th January, 2025 (3 pages), which is taken on record and marked as 'X-2' for identification. Both the affidavits X-1 and X-2, are in originals.

5. In X-2, the husband Mr. Amol Kaluram Shinde, who is a farmer, has made five statements, which read as under :

1. I say that, I am against the decision made by Petitioner to abort the unborn child.

2. I say that, I accept the paternity of the unborn child.

3. I say that, I am ready to take care of Petitioner as well as the unborn child.

4. I say that, I am ready to take responsibility of the unborn child.

5. I state that, I have read the contents of this affidavit and I understood the same. I state that the same are true and correct to the best of my knowledge and belief and the same is as per my instructions given to the advocates, in token of

which I have affixed my signature below.

6. It is apparent that the Petitioner (would be mother), has filed this Petition seeking leave to abort the foetus which is in 20 weeks and 4 days gestational period. She was in the mood of aborting the child because of certain verbal interaction between the husband and the wife. We have interacted with the husband in the Court hall and the wife addressing us online. Both appear to be quite vocal. But it appears that both have the maturity to understand each other and resolve their problems. The wife has stated that if the husband is willing to take good care of the child and treat her properly, she has no reason to seek medical termination of the pregnancy considering that if the child is born, it would be their first child.

7. The husband has also shown maturity and, therefore, has made certain constructive statements in the affidavit X-2. Except misunderstanding and accusation that the wife resides with her parents for long duration, per contra, the accusation that the husband sides with his parents and troubles the petitioner wife, that we do not find there to be any other problem. The wife has stated

that if the husband is not likely to take good care of her as his wife, considering his earlier oral statement, made privately to the wife that he will keep the child and forsake the wife, then she does not desire to gift a child to her husband.

8. In view of the above, we deem it appropriate to let the couple meet each other, since the wife is residing in her paternal home. One case is pending between the two, before the Judicial Magistrate First Class at Pune bearing no.PWDVA/16/2025. We, therefore, request the learned Judge of the said Court to ask the Superintendent of the Court to make some arrangements within the Court premises to enable the husband and the wife to meet each other and sort out their issues.

9. The learned Advocates Mr. S.V. Jadhav, for the wife and Mr. S.M. Bangar, for the husband, both will encourage this couple to sort out their problems so that a congenial atmosphere could be created keeping in view that if the child is born, it would be their first child. The husband has said on oath, as well as before us, orally, that it is not the wife who can decide the gender of the baby and biologically, it depends on the husband in view of the X

and Y chromosomes which will decide the gender of the child.

10. The husband also states that he is not questioning the character of his wife, he trusts her and he knows that the child likely to be born, is in view of their marriage. Let the couple meet in the Court premises at Pune on 30th January, 2025, 31st January, 2025 and 1st February, 2025. The learned Judge may, if required, also involve a trained Mediator to encourage the couple to trust each other for the sake of the child, which is their own. If required, further time, may be granted on 3rd February, 2025 or 4th February, 2025.

11. We are listing this Petition on 6th February, 2025 at 2.30 p.m. to record what has transpired in view of the above.

(PRAVIN S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)