

THE HIGH COURT OF MADHYA PRADESH

W.P. No. 6494/2020

Ku. Astha Pande. V/s. State of M.P. & another.

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Indore, dated : 26.03.2020

Petitioner by Shri Yashpal Rathore, Advocate.

Respondents/State by Shri Vinay Gandhi, Govt.
Advocate.

Heard on the question of admission.

Learned counsel for the petitioner submits that the petitioner is present in the Court premises.

Though the petitioner has signed the affidavit in support of the petition, but for the satisfaction of this Court, the Principal Registrar is directed to record the statement of the petitioner in support of the averments made in the petition. Except the petitioner, no one will appear before the Principal Registrar at the time of recording her statement and it shall be camera proceedings. The Principal Registrar shall record the statement of the petitioner in "Question & Answer" form and submit the report to this Court during the course of the day.

**(VIVEK RUSIA)
JUDGE**

Later on :-

Petitioner has filed the present petition seeking direction for termination of her pregnancy by the registered Medical Practitioner.

2. According to the petitioner, she is a student of B.A. Final and she was in affairs with a boy studying in her class. She

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became pregnant and as on having 24 weeks of pregnancy. Her boy friend has broke up the relationship and refused to marry with her, hence, she does not want to continue with the pregnancy, as it is a bad incident of her life. Petitioner approached the M.Y. Hospital but the Medical Practitioner has refused to terminate the pregnancy on the ground that the pregnancy is of 24 weeks and same is impermissible under the provisions of Medical Termination of Pregnancy Act, 1971. Hence, petition before this Court.

3. I have heard the learned counsel for the parties. The Principal Registrar was requested to take a statement of the petitioner in order to verify as to whether she is still willing to terminate the pregnancy? The Principal Registrar has recorded her statement in camera proceedings and according to which still she is willing to go for termination of the pregnancy.

4. Learned counsel appearing for the petitioner submits that because of this unwanted pregnancy, the petitioner is suffering grave injury to her mental health, hence, despite exceeding the 20 weeks of pregnancy, with the permission of the Court the pregnancy can be terminated. In support of his contention, he is placing reliance over the judgment passed by the Apex Court in the case of **Suchita Shrivastava and another V/s. Chandigarh Administration** reported in (2009) 9 SCC 1 in which the Apex Court has held that with the consent of the woman the pregnancy can be terminated even after 20 weeks. He is also placing reliance over the judgment passed by the Apex

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Court in the case of **X & Others V/s. Union of India & Others** reported in **(2017) 3 SCC 458** in which the Apex Court has 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 of India and permitted the termination though the current pregnancy of the petitioner even after 24 weeks.

5. Shri Yashpal Rathore, learned counsel appearing for the petitioner further submits that in case of **Mehmood Nayyar Azam V/s. State of Chhattisgarh and Others** reported in (2012) 8 SCC 1, the Apex Court has explained the meaning of terms “torture”, “harassment”, “inhuman torture” and “mental and “psychological torture” and held that any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution of India. He further submits that if the petitioner continuous with the pregnancy and delivers then the child she will suffer the mental torture through out her life, as she would not be in a position to give the name of father to the unwanted child, therefore, the petitioner may be allowed by issuing direction to the Medical Practitioner to terminate the pregnancy of the petitioner in order to give respect to her willingness.

6. Shri Vinay Gandhi, learned Govt. Advocate appearing for the respondent/State submits that the termination of pregnancy beyond the period of 20 weeks is impermissible under the provisions of Act of 1971. The petitioner is not fulfilling any of the contingency provided under Sub Clause (i) (ii) & (b) of

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Sub Section 2 of Section 3 of the Act of 1971. She approached the M.Y. Hospital for termination of pregnancy after crossing the period of 22 weeks. She had a knowledge of pregnancy long back but chosen to continue with the pregnancy. By her volunteer act she entered into the physical relationship with the boy at the age of majority. She was very much aware of the consequence of it and continued with the unwanted pregnancy. Petitioner is neither a rape victim nor the foetus is suffering from any congenital defect. As per the medical opinion there is no threat to the petitioner's life if she is permitted to continue upto full terms of the pregnancy and deliver a child, if she is permitted to terminate the pregnancy that would amounts to taking of life of an unborn child.

7. Shri Yashpral Rathore, learned counsel for the petitioner fairly concedes that he has not come across any judgment passed by the High Court as well as the Apex Court in which in a similar facts and circumstances the Court has permitted for termination of the pregnancy. In case of Suchita Shrivastava (supra) the petitioner was a victim of rape and attended the age of majority and was capable to give consent. In case of Ms. X & Others (supra) the girl was 22 years of age and the pregnancy was 22 weeks old on the date of the petition and her medical condition known as “bilateral renal agenesis and anhydroamnios”, therefore, the Apex Court has permitted for termination of pregnancy beyond period of 22 weeks. The facts of this case are not in dispute. The petitioner at the age of

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majority had an affair with a boy friend and became pregnant. She approached the M.G.M. Medical College and M.Y. Hospital for termination of her pregnancy very late. She was thoroughly examined by the team of Doctor and they opined that the pregnancy is 24 weeks, hence, termination is impermissible under the M.T.P. Act. The petitioner has also undergone an ultra sound and according to the report, the foetal movement and cardiac activity are normal, therefore, neither the petitioner nor the foetus is suffering from any physical abnormality. There is no opinion by the Doctor that termination is required either in order to save the life of pregnant woman or in order to prevent grave injury to the physical and mental health of the pregnant woman or in view of the substantial risk that if the child was born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

8. Vide order dated 17.03.2020, this Court has directed the Medical Superintendent M.Y. Hospital to undergo the fitness examination for termination of pregnancy. The team of four doctors vide letter dated 23.03.2000 gave an opinion that the petitioner is having 8.5 gm. HB and she has been transfused 1 unit of blood. She can be considered for termination of pregnancy after optimization of her Hemoglobin status.

9. Under the Indian Penal Code abortion is a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. The legislature came up with the Medical Termination of

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Pregnancy Act, 1971 with aim and object to save the mother's health, strength and some time life by way of termination of pregnancy. The legislature has carved out certain exceptions under which the pregnancy can be terminated without attracting any penal consequences, under the IPC or any other law for the time being in force. As per Section 3 of the Act a registered Medical Practitioner shall not be guilty of any offence if pregnancy is terminated by him in accordance with the provisions of the Act. As per Sub Section 2 the pregnancy may be terminated by the registered Medical Practitioner where the pregnancy does not exceed 12 weeks or where the pregnancy exceeds 12 weeks but does not exceed 20 weeks and two registered Medical Practitioners are of the opinion that the continuance of the pregnancy would involve a risk to life of a pregnant woman or a grave injury to her physical or mental health or there is a substantial risk that if the child was born it would suffer from such physical or mental abnormalities as to be seriously handicapped. By way of explanation (1) where the pregnancy is caused by rape, the anguish shall be presumed to constitute a grave injury to a mental health and as per explanation (2) where the pregnancy occurs as result of failure of any contraceptive device or methods used by married woman or her husband for the purpose of limiting the number of children, the anguish caused may be presumed to constitute a grave injury of a mental health to a pregnant woman. The petitioner is not falling in either of the contingencies given in

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explanation (1) & (2). In case of both the contingencies as given in explanation (1) and (2), from the day one the woman was not willing for the child or pregnancy, therefore, it was presumed to be a grave injury to the mental health but in the present case it is not the case of the petitioner that she became pregnant by way of rape or failure of any device or method. Even otherwise the explanation 2 is applicable to married woman or husband. Therefore, there is a complete bar for termination of pregnancy in case of the petitioner because the pregnancy has crossed the barrier of 20 weeks and the petitioner is not coming under the category of a grave injury to the mental health, as per explanation (1) & (2). The Apex Court in case of Suchita Shrivastava (supra) also has held that the termination of pregnancy is only permitted when the condition specified in the applicable statute have been fulfilled, hence the provisions of M.T.P. Act, 1971 can also be viewed as a reasonable restriction that have been placed on the exercise of reproductive choice.

Para 22 to 25 are reproduced below :-

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 recognize 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

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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. However, in the case of pregnant woman there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.

23. A perusal of the above mentioned provision makes it clear that ordinarily a pregnancy can be terminated only when a medical practitioner is satisfied that a "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." [as per Section 3(2)(ii)] or when "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." [as per Section 3(2)(ii)]. While the satisfaction of one medical practitioner is required for terminating a pregnancy within twelve weeks of the gestation period, two medical practitioners must be satisfied about either of these grounds in order to terminate a pregnancy between twelve to twenty weeks of the gestation period.

24. The Explanation to Section 3 have also contemplated the termination of pregnancy when the same is the result of a rape or a failure of birth control methods since both of these eventualities have been equated with a "grave injury to the medical health" of a woman.

25. In all such circumstances, the consent of the pregnant woman is an essential requirement for proceeding with a termination of pregnancy. This position has been unambiguously stated in Section 3(4)(b) of the MTP Act, 1971.

10. In a recent judgment passed by the Apex Court in the case of **Z V/s. State of Bihar & Others** reported in **(2018) 11 SCC 572** the victim was suffering from AIDS desiring to terminate the pregnancy on account of rape committed on her within the statutory limit of 20 weeks of pregnancy. The

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termination of pregnancy was not carried out within 20 weeks because of the fault on part of the Medical authorities, therefore, the Apex Court has awarded the compensation of Rs.10,00,000/- in favour of victim. In this case also the Apex Court has held that legislative intention of M.T.P. Act, 1971 and the decision in case of Suchita Shrivastava (supra) prominently emphasis on personal autonomy of a pregnant woman to terminate the pregnancy in terms of Section 3 of the Act. In view of the above discussion, as per the provision of Section 3 admittedly the petitioner is not entitled for termination of pregnancy. The only reason given by the petitioner for termination is that the boy friend has broken up the relationship with her. In future there may be a possibility of re-association between them but the termination of pregnancy is irreversible process. The petitioner came up with the plea of breaking of relationship after the expiry of 22-24 weeks, had she been approached immediately after initial of the pregnancy the Medical Practitioner would have terminate the pregnancy or this Court would have permitted to terminate the pregnancy, therefore, in the facts and circumstances of the case, no case is made out for termination of pregnancy. Hence, the petition is hereby **dismissed**.

**(VIVEK RUSIA)
JUDGE**

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