

R vs Union of India

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Court : Kerala

Decided On : Feb-11-2021

Judge : Honourable Smt. Justice P.V.Asha

Appeal No. : WP(C)/3481/2021

Appellant : R

Respondent : Union of India

Judgement :

W.P(C).No.3481/2021-I 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE SMT. JUSTICE P.V.ASHA THURSDAY,
THE 11TH DAY OF FEBRUARY 2021 / 22ND MAGHA,1942
WP(C).No.3481 OF 2021(I) PETITIONER: MRS R. XXXX BY ADVS.
DR.K.P.PRADEEP SRI.T.T.BIJU SMT.T.THASMI SMT.M.J.ANOOPA
RESPONDENTS:

1 UNION OF INDIA REPRESENTED BY SECRETARY, MINISTRY OF
WOMEN AND CHILD DEVELOPMENT, SHASTRI BHAVAN, NEW
DELHI 110 001. 2 STATE OF KERALA, REPRESENTED BY THE
SECRETARY, DEPARTMENT OF WOMEN AND CHILD

DEVELOPMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN 695 001. 3 DIRECTOR OF MEDICAL
EDUCATION, MEDICAL COLLEGE KUMARAPURAM RD,
CHALAKKUZHI, THIRUVANANTHAPURAM, 695 011. 4 STATION
HOUSE OFFICER/INSPECTOR OF POLICE, VATTAPARA POLICE
STATION, VATTAPARA, POLICE STATION, VATTAPARA,
THIRUVANANTHAPURAM 695 028. 5 SUPERINTENDENT,
GOVERNMENT MEDICAL COLLEGE HOSPITAL, KUMARAPURAM
P.O, THIRUVANANTHAPURAM 695 011. 6 SUPEERINTENDENT,
GOVERNMENT WOMEN AND CHILD HOSPITAL, THYCAUD,
THIRUVANANTHAPURAM 695 014.

W.P(C).No.3481/2021-I 2 7 DISTRICT CHILD WELFARE COMMITTEE,
THIRUVANANTHAPURAM, GOVERNMENT CHILDREN'S HOME,
POOJAPURA, THIRUVANANTHAPURAM 695 012 REPRESENTED
BY ITS CHAIRPERSON.

SMT.PRINCY XAVIER, GOVERNMENT PLEADER ASGI. SRI.P.VIJAYA KUMAR
THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
W.P(C).No.3481/2021-I 3 P.V.ASHA J. ----- W.P.(C) No.3481
of 2021-I ----- Dated this the 11th day of February 2021

JUDGMENT

The mother of an unfortunate minor rape victim girl

aged 16 years, has approached this Court,

her. A Crime No.204/2021 has been registered in Vattapara Police Station, in
respect of the incident. The Writ Petition is filed producing Ext.P1 FIR dated
03.02.2021 and

Ext.P2 medical report dated 03.02.2021. As per Ext.P2 report the gestational age
was found to be 26 weeks and 6 days as on 03.02.2021. It is stated that victim girl
is not mentally prepared to accept the pregnancy and that there is high risk in the

event of continuation of her pregnancy as she has been subjected to the trauma of sexual assault.

2. When the matter came up for admission on 10.02.2021, this Court passed an interim order directing

the Superintendent of the Government Medical College Hospital, Thiruvananthapuram, to constitute a medical board including a Psychiatrist also and to furnish a report on W.P(C).No.3481/2021-I 4 the following: (i) Whether the continuance of the pregnancy involves risk to the life of the pregnant child or of grave injury to her physical and mental health;

(ii) Whether there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped ;

(iii) Whether having regard to the advanced stage of

pregnancy, there is any danger (other than the usual danger which arises even in spontaneous delivery or at the end of the full term) if the pregnant victim is permitted to terminate her pregnancy ;

(iv) The medical process best suited to terminate the pregnancy and the possibility of the child be born alive in the process ;

(v) The wishes of the minor child as regards the future course of action with respect to her pregnancy.

(vi) Any other issues the Medical Board regards as relevant in such matters.

3. The learned Government Pleader has made available the minutes of the Medical Board convened on 10.02.2021 with the following members: 1. Dr.Santhosh Kumar.V, Supdt., SATH

2. Dr.Nandini.V.R, HOD, O&G

3. Dr.Adma Harshan, Asso.Professor (06 Unit Chief

4. Dr.Rejani Raju, Dept. of Psychiatry

5. Dr.Mary Iype, Dept. of Pediatric Neurology

6. Dr.Radhika, Dept. of Neonatology

7. Dr.Priyasree J, RMO, Gynaec W.P(C).No.3481/2021-I 5

8. Dr. Sreekumari.R, Professor O&G (O2 Unit Chief) The opinion of the medical board is the following: 1. Neonatology consultation done : prognosis of fetus is guarded. High risk of poor neuro developmental outcome.

2. Pediatric Neurology Consultation : Mental and physical development of the fetus is likely to be very bad based on the USS report.

3. Psychiatry consultation : Considering the possible adverse psychological impact for patient and the anomalies of baby, termination of pregnancy can be done.

4. In view of gestational age 28 weeks in addition to

the usual risk like, hemorrhage, sepsis, risk of blood transfusion etc. there is a chance of failure of medical methods of termination and in such cases hysterotomy may be needed. Hence surgical and associated anaesthesia risk may be involved.

5. The Medical board felt that the available methods

of MTP are effective only up to 20 weeks of gestation. Beyond 20 weeks of pregnancy, labour is to be induced as per induction of normal pregnancy. But because of present gestational age, uterus may not respond to the usual methods of induction and hence we may have to resort to surgical methods which may involve surgical and anesthetic risk. There is possibility that the child may be born alive, however the victim and her guardian (mother) are not willing for resuscitation.

From the report, it is seen that as on today the gestational age is 28 weeks. In view of the opinion of the Psychiatrist, termination of pregnancy can be done.

4. As per Section 3(2)(b) of the Medical Termination

of Pregnancy Act 1971, termination

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 o

termination of pregnancy is permissible even in cases where the period of gestation exceeds the period prescribed in Section 3 and 4 of the Act, which reads as follows:

5. S.3 and S.4 when not to apply. - (1) The provisions of S.4

and so much of the provisions of sub-section (2) of S.3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

5. This Court has, in the judgments in ABC v. Union of India & others: 2020(4) KLT 279, Ms. X v. State of Kerala

and Others: 2016 (4) KLT 745, etc., ordered termination of pregnancy exceeding 20 weeks in the case of rape victims who were not mentally prepared to deliver the child, in

order to save their lives. The Apex court has in the

judgment in A v. Union of India: (2018)4 SCC 75 permitted

termination in a case where the gestational age was 25-26 W.P(C).No.3481/2021-I 7 weeks. In Murugan Nayakkar v. Union of India: 2017 SCC online SC 1092

allowed termination of pregnancy in the case of 13 year old child and in *Sarmishtha Chakraborty v. Union of India*: (2018) 13 SCC 339, permitted termination of pregnancy when the gestational age was 26 weeks, in view of the recommendation of the medical board and the medical report revealing the threat of severe mental injury to the woman and multiple complex problems to the child, if born alive, involving complex cardiac corrective surgery stage by stage after birth, in the event of continuation of the pregnancy. In *Meera Santosh Pal v. Union of India*: (2017) 3 SCC 462 also permission was granted when the pregnancy crossed 24 weeks, in view of the medical reports pointing out the risk involved. In the judgment reported in *Neethu Narendran V State of Kerala* : 2020(3) KHC 157 also this Court permitted termination of pregnancy when gestational

age crossed 23 weeks. As found in those cases the minor victim in this case is also not prepared to deliver a baby in this situation. In view of the trauma that the minor girl has undergone and taking note of the opinion of the Psychiatrist, I am of the view that the Writ Petition can be allowed permitting termination of pregnancy.

6. In the event the baby is born alive, it has to be taken care of as observed by the Bombay High Court in the

W.P(C) .No .3481/2021 - I

8 judgment

XYZ

"If a child is born alive, despite attempts at the medical termination of pregnancy, the parents as well as the doctors owe a duty of care to such child. The best interests of the child must be the central consideration in determining how to treat the child. The extreme vulnerability of such child is reason enough to ensure that everything, which is reasonably possible and feasible in the circumstances, must be offered to such child so that it develops into a healthy child."

7. Therefore, the petitioner is permitted to subject

her daughter to medical termination of pregnancy. As any delay in undertaking the termination will involve serious consequences affecting the girl as well as the life of the baby in the womb, there shall be a direction to the Superintendent of

Government Medical College Hospital, Thiruvananthapuram to see that the termination of pregnancy

of the minor girl, the daughter of the petitioner, is undertaken by competent doctors under his/her supervision, at the earliest point of time, if possible, today itself in accordance with the provisions of the Medical Termination of Pregnancy Act, 1971, its rules and all other rules, regulations and guidelines prescribed for the purpose. The

Medical Board shall maintain a complete record of the procedure which is to be performed on the girl for termination of her pregnancy.

8. There will be a further direction to the Doctors

W.P(C).No.3481/2021-I 9 to take the tissue of the foetus for DNA identification and to maintain the same intact for future purposes, especially due to the fact that a criminal case is pending in the

instant case. If the child is born alive, despite the attempts at medical termination of the pregnancy, the Doctors shall ensure that everything, which is reasonably possible and feasible in the circumstances and in contemplation of the law prescribed for the purpose, is offered to such child so that he/she develops into a healthy child.

9. The petitioner shall produce the child victim before the Superintendent of Government Medical College Hospital, Thiruvananthapuram today itself.

10. The Registry and all concerned, shall see that

absolute privacy is maintained with respect to the identity of the petitioner while issuing the certified copy of the judgment or otherwise. There shall be a direction that copy of the Writ Petition, affidavit, the documents annexed to it and the medical report shall not be issued to any third person without obtaining orders from this Court.

The Writ Petition is allowed accordingly. Sd/- P.V.ASHA, JUDGE. rtr/
W.P(C).No.3481/2021-I 10 APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1

TRUE COPY OF THE FIR IN CRIME NO.204 OF 2021 AT VATTAPARA POLICE STATION. EXHIBIT P2 TRUE COPY OF OP REPORT OF THE GIRL ON 03- 02- 2021 AT 6TH RESPONDENT HOSPITAL. EXHIBIT P3 TRUE COPY OF THE ORDER OF PLACEMENT OF CHILD DATED 8-2-2021 OF THE 7TH RESPONDENT.

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