

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 23RD DAY OF JUNE 2023 / 2ND ASHADHA, 1945

WP (C) NO. 15534 OF 2023

PETITIONER:

XXXXXXXXXX

XXXXXXXXXX XXXXXXXXXXXX

BY ADV K.RAKESH

RESPONDENTS :

- 1 THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF WOMEN AND
CHILD DEVELOPMENT, SASTHRI BHAVAN,
NEW DELHI, PIN - 110001
- 2 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF HEALTH AND
FAMILY WELFARE DEPARTMENT, SECRETARIAT,
TRIVANDRUM, PIN - 695001
- 3 THE DISTRICT COLLECTOR
COLLECTORATE, CIVIL STATION, UP-HILL,
MALAPPURAM, PIN - 676505
- 4 THE DISTRICT MEDICAL OFFICER
OFFICE OF THE DISTRICT MEDICAL OFFICER, UPHILL,
MALAPPURAM, PIN - 676505
- 5 THE SUPERINTENDANT
GOVERNMENT MEDICAL COLLEGE HOSPITAL, MANJERI,
MALAPPURAM DISTRICT, PIN - 676121
- 6 THE SUPERINTENDANT
GOVERNMENT MEDICAL COLLEGE HOSPITAL,
KOZHIKKODE, PIN - 673008
- 7 THE STATION HOUSE OFFICER
VAZHIKADAVU POLICE STATION, VAZHIKADAVU P.O.,
MALAPPURAM DISTRICT, PIN - 679333
- 8 THE CHILD WELFARE COMMITTEE
REPRESENTED BY ITS CHAIRMAN, THAVANOOR, MALAPPURAM

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DISTRICT, PIN - 679573

9 ADDL.R9: KULATHOOR JAISINGH, AGED 45
YEARS, S/O LATE DEVANESAN, THUNDUVILA,
KULATHOOR, UCHAKKADA P.O.,
THIRUVANANTHAPURAM DISTRICT, PIN - 695 506
(IS SUOMOTU IMPEADED AS ADDITIONAL 9TH
RESPONDENT IN THE WRIT PETITION AS PER
ORDER DATED 23.06.2023 IN I.A.NO.3/2023)

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA

SARIN

M.R.SASITH

P.SANTHOSHKUMAR (KARUMKULAM)

SNEHA JOY

PARVATHI KRISHNA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 23.06.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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P.V.KUNHIKRISHNAN, J.

W.P.(C)No. 15534 of 2023

Dated this the 23rd day of June, 2023

JUDGMENT

The father of a minor girl aged 15 years filed this writ petition with a main prayer to terminate the pregnancy of his daughter. It is stated that the minor son of the petitioner impregnated her minor daughter. I am sure that the petitioner, the father of these minor children put his signature in this writ petition with tears in his eyes. He and his wife has to face this embarrassing situation not only today but in future too. It is the duty of our society to keep these parents close to get over from this trauma. Nobody can blame the parents. But,

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we the society is responsible for this. Sibling incest may take place in the context of a family system that does not provide a safe environment for its members. But it may also happen because of the lack of knowledge about safe sex. I am of the considered opinion that the Government should seriously think about the necessity of proper 'sex education' in schools and colleges. This court observed like this on earlier occasion also. Safe sex education is the need of the hour to avoid these type of embarrassment to the parents. A good family atmosphere is necessary in the society. To attain this, every citizen of this country should join together without pelting stone to such unfortunate people. The above writ petition is filed with the following prayers:

"(i) Issue a writ of mandamus or any

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other appropriate writs, orders of directions directing the respondents to terminate the pregnancy of the victim girl in Crime No.331/2023 of the Vazhikadavu Police Station as expeditiously as possible;

(ii) Declare that the pregnancy would cause serious mental injury to the minor girl and hence the same is liable to be terminated;

(iii) Issue a writ of mandamus or any other appropriate writs, orders of directions directing the 8th respondent to restore the custody of the minor girl child to her parents forthwith;

(iv) Dispense with the filing of English translation of Vernacular documents;

(v) Grant such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case."[SIC]

2. When this writ petition came up for consideration on 16.05.2023, this Court passed the following order:

"When the matter came up before this Court on 12.5.2023, the learned Government Pleader

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submitted that the victim was produced before the Medical Board on 11.05.2023. She sought for time to produce the medical reports.

2. Today, the learned Government Pleader makes available the medical report of the Special Medical Board constituted by Superintendent, Government Medical College Hospital, and the observations in the report are extracted hereunder:-

Opinions of the Medical Board after Examination are

"1. Child is physically and mentally fit for Medical Termination of Pregnancy.

2. Continuation of pregnancy is likely to cause grave injury to the social and mental health of the child.

3. Physical health of the child is likely to be affected by the complication of teenage pregnancy.

4. As she has crossed 32 weeks of pregnancy there is a possibility of giving birth to a live baby with all the problems of prematurity. So the Medical Board has raised concerns about the further care of the baby in case needed."

3. Since risk factors are involved, the

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petitioner is to file an affidavit before this Court undertaking to undergo the risk shown in the report of the Medical Board. The Medical Board shall also evaluate the possibility of saving the life of the baby before termination of pregnancy.

Post on 19.05.2023.

Hand Over "

3. Thereafter, when the matter came up for consideration on 19.05.2023, this Court passed the following order:

"The petitioner is the father of a minor girl aged 15 years and he has approached this Court, seeking the following reliefs:

(i) Issue a writ of mandamus or any other appropriate writs, orders of directions directing the respondents to terminate the pregnancy of the victim girl in crime No.331/2023 of the Vazhikadavu Police Station as expeditiously as possible;

(ii) Declare that the pregnancy would cause serious mental injury to the minor girl and hence the same is liable to be terminated;

(iii) Issue a writ of mandamus or any other appropriate writs, orders of directions directing the 8th respondent to restore the custody of

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*the minor girl child to her parents forthwith;
(iv) Dispense with the filing of English translation of Vernacular documents; (v) Grant such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

2. The unfortunate situation in this case is as follows:

The minor daughter of the petitioner got impregnated by the son of the petitioner and as of now the daughter is 7 months pregnant. The prayer as above is sought in such circumstances.

3. In response to the averments contained in the writ petition, the Medical Board after examination, submitted a report wherein, their opinion was expressed in the manner as follows:

"Opinions of the Medical Board after Examination are

- 1. Child is physically and mentally fit for Medical Termination of pregnancy.*
- 2. Continuation of pregnancy is likely to cause grave injury to the social and mental health of the child.*
- 3. Physical health of the child is likely to be affected by the complication of teenage pregnancy.*
- 4. As she has crossed 32 weeks of pregnancy there is a possibility of giving birth to a live*

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baby with all the problems of prematurity. So the Medical Board has raised concerns about the further care of the baby in case needed.”

4. Earlier, when the matter came up for consideration before this Court, taking note of the eventuality as highlighted by the Medical Board as serial No.4 above, the petitioner was directed to submit an affidavit, undertaking to undergo the risks as highlighted by the Medical Board. In compliance of the aforesaid direction, an affidavit has been submitted by the petitioner.

5. Upon perusal of the medical report, it is evident that, the child is physically and mentally fit for medical termination of pregnancy. It is also stated that continuation of pregnancy is likely to cause grave injury to the social and mental health of the child. Considering the fact, the child is born from his own sibling, various social and medical complications are likely to arise. In such circumstances, the permission as sought for by the petitioner to terminate the pregnancy is inevitable. However, even while addressing the said issue and passing appropriate orders in this regard, the possibility of giving birth to a live baby cannot be overruled, as highlighted by the Medical

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Board.

*6. In such circumstances, I am inclined to allow medical termination of pregnancy of the daughter of the petitioner, in the light of the principles laid down by this Court in the decisions reported in **xxx v. Union of India and others** [2021(3) KLT 279] and **xxx v. Union of India and others** [2022 KHC 2022]. Therefore, it is ordered that, respondents 4 and 5 are directed to take urgent steps to medically terminate the pregnancy of minor daughter of the petitioner without any delay. After completion of the procedure, a report in this regard shall be submitted before this Court to enable the Court to pass appropriate orders for addressing the further issues that are likely to arise in this case.
Post after a week."*

4. Again when the matter came up for consideration on 02.06.2023, this Court passed the following order:

"The petitioner is free to submit an application before the 8th respondent seeking restoration of the child in accordance to Sec. 40 of

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Juvenile Justice (Care and Protection of Children) Act, 2015 by tomorrow. If such an application is received, the 8th respondent will consider the same and take a decision in it, in consultation with the doctors, within one week from the date of receipt of the application. The order passed by the 8th respondent will be produced before this Court.

2. Regarding the discharge of the petitioner's child, the Police authorities can do the needful in consultation with the medical authorities. The custody of the new born child of the minor girl also will be decided by the 8th respondent in accordance to Sec.35 of the Juvenile Justice Act.

3. Post on 09.06.2023.

Issue a copy of this order today itself."

5. Today when the matter came up for consideration, both sides submitted that, as per order dated 03.06.2023, the Child Welfare Committee, Malappuram handed over the minor mother to her uncle. The order is produced before this Court. It will be better to extract the relevant portion of the above order:

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“മേൽ പുറത്തെ വസ്തുതകളും ബഹുമാനപ്പെട്ട കേരള ഹൈക്കോടതിയുടെ ഉത്തരവും പരിഗണിച്ചു ഈ ചൈൽഡ് വെൽഫെയർ കമ്മിറ്റി താഴെ പറയും പ്രകാരം ഉത്തരവാകുന്നു.

1. കുട്ടിയെ കുട്ടിയുടെ അമ്മാവനിൽ നിന്നും undertaking വാങ്ങി അമ്മാവനൊപ്പം വിട്ടു നൽകുന്നു.
2. കുട്ടിക്ക് ആവശ്യമായ കൗൺസിലിംഗ് അടക്കമുള്ള പിന്തുണ കുട്ടിയുടെ രക്ഷിതാക്കൾ ആവശ്യപ്പെടുന്നതിന് അനുസരിച്ച് കുട്ടിക്ക് സൗകര്യപ്രദമായ സ്ഥലത്ത് വെച്ച് നൽകാൻ ജില്ലാ ചൈൽഡ് പ്രൊട്ടക്ഷൻ ഓഫീസറോട് നിർദ്ദേശിക്കുന്നു.
3. കുട്ടിയെ കാവൽ പ്ലസ് പദ്ധതിയിൽ ഉൾപ്പെടുത്തുന്നു.”

6. As far as the new born child is concerned, the Child Welfare Committee informed that the new born child is surrendered to the committee and a consequential order is also passed. The relevant portion of the order No.CWC/M/1547/2022 dated 07.06.2023 passed by the Child Welfare Committee, Malappuram is extracted here under:

"ടി കേസിലെ അതിജീവിതയായ കുട്ടിയെ 6/5/2023

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ന് വഴിക്കടവ് പോലീസ് മലപ്പുറം ചൈൽഡ് വെൽഫെയർ
 കമ്മിറ്റി മുൻപാകെ ഹാജരാക്കുകയും അതിജീവിതയെ XXXX
 മെഡിക്കൽ കോളേജിൽ പ്രവേശിപ്പിക്കുകയും അതിജീവിതയ്ക്ക്
 XXXXX മെഡിക്കൽ കോളേജിൽ വച്ച് Induced delivery
 യിൽ കുട്ടി ജനിക്കുകയും ചെയ്തു. നവജാത ശിശുവിനെ
 വെൽഫെയർ കമ്മിറ്റി മുന്പാകെ സറണ്ടർ ചെയ്യാൻ
 അതിജീവിതയുടെ മാതാപിതാക്കൾ സമ്മതം അറിയിക്കുകയും
 ആയതിന്റെ അടിസ്ഥാനത്തിൽ 5/6/2023 ന് XXXX
 ശിശുക്ഷേമ സമിതിയുടെ കീഴിൽ പ്രവർത്തിക്കുന്ന ശിശു
 പരിപാലന കേന്ദ്രത്തിലേക്കു മാറ്റുകയും തുടർന്ന് 7/6/2023
 അതിജീവിതയുടെ മാതാവു അതിജീവിതയും XXXX
 ചൈൽഡ് കമ്മിറ്റി അംഗം XXXXXXXXXX മുൻപാകെ
 ഹാജരായി കുട്ടിയെ സറണ്ടർ ചെയ്തു രേഖകൾ ഒപ്പിട്ടു
 നൽകുകയും ചെയ്തിട്ടുള്ളതാണ്. ടി നവജാത ശിശു വിനെ
 XXXX ചൈൽഡ് വെൽഫെയർ കമ്മിറ്റി മുന്പാകെ സറണ്ടർ
 ചെയ്തു വിവരം പ്രഖ്യാപിക്കുകയും XXXXX ശിശു പരിപാലന
 കേന്ദ്രത്തിൽ സംരക്ഷിച്ച് പരിപാലിക്കുകയും ചെയ്യുന്നു."

7. In the light of the above orders, I think
 no further order is necessary. The Child Welfare

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Committee will take necessary consequential steps in accordance with law. The protection of the new born child is the duty of the state. These types of causalities shall not be there in our society in future. The embarrassment of the parents and also the victim girl cannot even be imagined. As I said earlier, this happened because of the lack of knowledge about the safe sex. Minor children are in front of 'internet' and 'google search'. There is no guidance to the children. The Government should constitute a committee, if necessary, to study the issue and should think about including the 'safe sex education' in the curriculum of schools and colleges.

The Registry will forward a copy of this judgment to the Chief Secretary, State of Kerala for taking appropriate action in the light of the facts

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and circumstances of this case.

With the above observation, this writ petition
is disposed of.

DM

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

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APPENDIX OF WP(C) 15534/2023

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE FIR AND FIS IN
CRIME NO.331/2023 OF THE VAZHIKADAVU
POLICE STATION DATED 6-5-2023.

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE