

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Writ Appeal No.543/2020

Ashish Jain v/s The State of Madhya Pradesh

Indore, dated 12.05.2020

Shri Arihant Kumar Nahar, learned counsel for the appellant.

Shri Amol Shrivastava, learned Government Advocate for the respondent / State.

The present Writ Appeal is arising out of the order dated 20.03.2020 passed by the learned Single Judge in W.P. No.6057/2020 (Ashish Jain v/s The State of Madhya Pradesh).

In the present case, at that relevant point of time when the order was passed by the learned Single Judge, the girl in question was minor and she has categorically stated before the Principal Registrar of this Court that she does not want to terminate the pregnancy. The present appellant, who is the father of the girl, has preferred the present writ appeal and when the matter was listed before this Court, the girl in question was already above 18 years of age.

This Court, as the girl was major, had directed the girl to give statement before the Principal Registrar of this Court on 11.05.2020 and the girl has given statement stating categorically that she has left her house on 09.08.2018 with Shubham on her own sweet will. She left for Punjab, both of them stayed at Amritsar and then later on, returned back to Ujjain. She has categorically stated that at no point of time, she was subjected to rape and at the behest of her father, a report was lodged with the police and Shubham is in jail. She has also stated categorically that she does not

want to terminate the pregnancy in fact she wants to marry Shubham and because she wanted to give statement before the Principal Registrar, she has been chased out of the house at this advance stage of pregnancy. She has also stated that she is aged about 22 years and she wants to marry Shubham.

Section 3 of the Medical Termination of Pregnancy Act, 1971 reads as under:-

“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 twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds 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 or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable 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 ⁴ [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."

In light of the aforesaid statutory provision of law, as the girl in question is major, she does not want to terminate the pregnancy and she has categorically stated so before the Principal Registrar, the question of terminating the pregnancy does not arise. This Court does not find any reason to interfere with the order passed by the learned Single Judge.

It is needless to mention that the girl in question has been chased out by her father, she does not have place to live and she needs help in the matter of delivery of child. The Collector, Indore shall provide proper shelter to the girl in question and the entire treatment shall be provided by the State free of cost as she is at the advance stage of pregnancy and a child is likely to be delivered within a week or two. A copy of this order be sent to the concerned SHO and he shall make an endeavour to trace out the girl and arrange her meeting with the Collector. The girl in question shall be free to approach the Collector along with the order passed by this Court and the Collector, Indore shall provide her shelter either in shelter home or in some safe house or in a hostel

and shall also look after the girl in question till she delivers the child and till she recovers after delivering the child. The Collector, Indore shall also ensure the safety of the girl in question.

With the aforesaid, the present Writ Appeal stands dismissed. A copy of this order be sent to the Collector and the concerned SHO.

Certified copy, as per rules.

(S.C. SHARMA)
J U D G E

(SHAIENDRA SHUKLA)
J U D G E

Ravi