

WA. 1786/2024

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2024:KER:83410

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 8TH DAY OF NOVEMBER 2024 / 17TH KARTHIKA, 1946

WA NO. 1786 OF 2024

[AGAINST THE JUDGMENT DATED 30-10-2024 IN WP(C) NO.37000 OF
2024 OF HIGH COURT OF KERALA]

APPELLANT/PETITIONER:

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XXXXXXXXXX XXXXXXXXXXXX

BY ADVS. SRI. MITHUN PAVANAN,
SRI. MOHAMED AMJAD K.M. ,
SRI. MERIN THOMAS.

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY SECRETARY,
MINISTRY OF WOMEN AND CHILD DEVELOPMENT,
SASTHRI BHAVAN, NEW DELHI, PIN - 110001.
- 2 STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
- 3 DIRECTOR OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O., KUMARAPURAM ROAD,
CHALAKKUZHI, THIRUVANANTHAPURAM, PIN-695011.

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- 4 THE SUPERINTENDENT,
GOVERNMENT TALUK HEAD QUARTERS HOSPITAL,
KODUNGALLUR, THRISSUR, PIN-680664.

- 5 THE SUPERINTENDENT,
GOVERNMENT MEDICAL COLLEGE HOSPITAL THRISSUR,
M.G. KAVU, MEDICAL COLLEGE P.O,
THRISSUR, PIN-683596.

BY SRI.K.P.HARISH SENIOR GOVERNMENT PLEADER
BY ADV. SRI.ANISH JAIN, CGC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
08.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Nitin Jamdar, C. J.

This appeal under Section 5 of the Kerala High Court Act, 1958 is filed by the Original Petitioner, challenging the judgment and order issued by the learned Single Judge in W.P.(C) No. 37000 of 2024, dated 30 October 2024. By the impugned judgment, the learned Single Judge rejected the Petitioner’s request, the mother of the minor survivor girl, to medically terminate her pregnancy.

2. The petitioner is the mother of a 16-year-old school-going girl. She has been subjected to repeated sexual assault. A crime has been registered at the police station under Sections 354, 354A(2), 354B, 376, 376(2) (n), 376(3), and 506 of the Indian Penal Code, 1860, as well as Sections 4(1), (2) read with Sections 3(a), 6 read with 5(j)(ii), (1), 8 read with 7, and 12 read with 11(iv) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Neither the minor nor her mother was aware of the pregnancy until a Gynaecologist confirmed it. By that time, the foetus had reached a gestational age of 25 weeks and 6 days, and it was not possible to medically terminate the pregnancy without intervention of the Court.

3. The Petitioner stated that the minor is currently in her 26th week of pregnancy. Continuing the pregnancy will cause severe psychological trauma, and the minor's family is in a state of shock. Furthermore, the minor is not mentally prepared to accept and deliver the child. In these



circumstances, the Petitioner approached the learned Single Judge by filing a writ petition for a direction to form a Medical Board under Section 3(2)(c) of the Medical Termination of Pregnancy Act, 1971 (MTP Act of 1971). The Petitioner requests that the Board shall provide an opinion and subsequently declare her entitled to the necessary follow-up actions for medical termination of her daughter's pregnancy.

4. By an order dated 22 October 2024, the learned Single Judge directed the Superintendent of the Government Medical College, Thrissur to form a Medical Board to examine the minor. The Medical Board submitted a report stating that although the gestation period had surpassed 26 weeks and the ultrasound scan showed no anomalies, medical termination of pregnancy was most appropriate, as continuing the pregnancy would severely impact the mental health of the 16-year-old victim of rape, as conception occurred due to this crime. The learned Single Judge rejected the opinion of Medical Board regarding mental health on the ground that the Board lacked a Psychologist among its members. The learned Single Judge then relied on the fact that the foetus showed no anomalies and refused to order medical termination of the pregnancy. It was noted that if the minor and her parents wished to put the child for adoption, the State should take the necessary steps. Being aggrieved, the Petitioner has filed this appeal.

5. We have heard Mr. Mithun Pavanan, learned counsel for the Appellant and Mr. K.P. Harish, learned Senior Government Pleader.



6. Section 3(2) of the MTP Act, 1971 reads thus:

“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 twenty weeks, if such medical practitioner is ,
or*

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.

Explanation 1. - For the purpose of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such



pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2. - For the purpose of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2-A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2-B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2-C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2-D) The Medical Board shall consist of the following, namely ;-

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and



(d) such other number of members as may be notified in the Official Gazette by the State Government or Union Territory, as the case may be.]

(3) xxxxxxxxxxxxxxxx”

7. Reading this provision, in the case of a minor, who is a victim of rape, the mental trauma suffered by her cannot be an irrelevant consideration also in view of the decision of the Hon’ble Supreme Court in the case of *XYZ v. State of Gujarat (2023 KHC 7282)*, *A (Mother of X) v. State of Maharashtra (AIR 2024 SC 2499)*, and the decision of the Bombay High Court in the case of *X v. State of Maharashtra (2020 SCC Online Bombay 677)* and *X v. State of Maharashtra [WP ASDB-LD-VC-109 of 2020 dated 3 July 2020]*. That being the position when the Medical Board had already opined that the minor would suffer mental trauma, if the learned Single Judge was of the view that the opinion of the Medical Board could not be considered due to the absence of a Psychiatrist on the panel, a direction could have been issued for an examination by a Psychiatrist. Unfortunately, no such direction was issued.

8. Therefore, when the appeal came up yesterday (7 November 2024), we requested the Superintendent of Government Medical College, Thrissur, to provide a suitable Psychiatrist to examine the minor and submit a report regarding her mental health in relation to the distress caused by the pregnancy. The Professor from the Department of Psychology at Government Medical College, Thrissur, has examined the



minor and concluded that she is experiencing an adjustment disorder with a depressive reaction. It is stated that she does not have the mental capacity to continue with the pregnancy and that doing so would be detrimental to her mental health.

9. The Medical Board's report submitted to the learned Single Judge has already established the mental trauma the minor is experiencing. Considering all circumstances, including the provisions of Section 3 of the MTP Act, 1971, the statutory presumption regarding the mental trauma of a minor rape victim, the Psychiatrist's report, and the wishes of both the Petitioner and the minor, we are of the opinion that the request for medical termination of pregnancy should be granted

10. Accordingly, the Petitioner is permitted to go ahead with the medical termination of the pregnancy of her minor daughter as per the opinion of the Medical Board and that of the Psychiatrist.

11. The Petitioner states the Petitioner will present the minor today before the Superintendent, Government Medical College, Thrissur, for admission for the requisite procedure.

12. The Government Medical College Hospital shall carry out the procedure required for the termination of pregnancy of the minor. Since the FIR has been filed, the tissues and blood samples of the foetus must be preserved for necessary medical tests, including DNA fingerprinting mapping. The Hospital shall preserve the blood samples of the foetus



and tissues to carry out the necessary medical tests, including DNA and other tests as ordered.

13. The Investigating Agency shall also ensure that the samples are forwarded to the Forensic Science Laboratory for preservation for the trial.

14. In case after the procedure, the child born is alive, the Medical Practitioner carrying out the procedure shall ensure that necessary facilities are provided to such child to save the life. If the child is born alive and the minor or parents are not willing to take responsibility of the child, then the State and its agency will have to assume full responsibility of the child.

15. The Appeal is accordingly disposed of in the above terms.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

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P.A. TO C.J.