



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 28TH DAY OF FEBRUARY 2024 / 9TH PHALGUNA, 1945

WP(C) NO. 6527 OF 2024

PETITIONER:

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADV R.LEELA

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SASTHRI
BHAVAN, NEW DELHI-, PIN - 110001
 - 2 STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO
GOVERNMENT DEPARTMENT OF WOMEN AND MINISTRY OF CHILD
WELFARE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM .,
PIN - 659001
 - 3 THE DIRECTOR HEALTH SERVICES, GENERAL HOSPITAL
ERNAKULAM, GH ERNAKULAM, ERNAKULAM 682011.
 - 4 THE DIRECTOR MEDICAL EDUCATION
MEDICAL COLLEGE HOSPITAL, ERNAKULAM, HMT COLONY (PO)
KALAMASSERY ERNAKULAM, PIN - 683503
 - 5 AKASH ROBAN, AGED 28 YEARS
S/O. ROBAN K.F, KANJOKKARAN HOUSE, MATHIRAPILLY
ROAD,EDAYAKUNNAM, CHERANALLOOR., PIN - 682027
- ADDL.R6 THE SUPERINTENDENT, ERNAKULAM MEDICAL COLLEGE,
KALAMASSERY, PIN - 683503

BY ADV SHYLAJA VARGHESE
SMT. VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



“CR”

JUDGMENT

Globally, always, at the core of all discourses relating to reproductive rights of women, is the inviolable doctrine of “bodily autonomy”.

2. Bodily Autonomy means “my body is for me; my body is my own”.

3. It is about power, choice and dignity - inherent in every human being.

4. Bodily Autonomy is the foundational edifice of gender equality and hence a constitutional right; and more so a component of the fundamental right itself.

5. It is only when women and girls have the means and ability to make decisions about their own bodies and lives – free from discrimination, violence or coercion – can they chart their own destiny, to realize full potential.

6. And when they do, the benefits extend not only to themselves, but to the community and to the nation itself.



7. Experience has long established that, societies flourish when women and children are empowered to exercise their Bodily Autonomy; but, many times, questions are posed as to its limits and perimeter.

8. According to the United Nations Population Fund (earlier called “United Nations Fund for Population Activities” or “UNFPA”), nearly half of all women in the world are denied Bodily Autonomy; and in its World Population Report of the year 2021, titled “My Body is My Own” it focuses, for the first time, on the power and capacity of women to make choices about their bodies without fear, violence or coercion. This report comprehensively dealt with women's decision making power and on laws supportive of sexual and reproductive health and rights; highlighting the legal, economic and social balance, to secure Bodily Autonomy.

9. The afore becomes even more poignant when it comes to the right of women to seek Medical Termination of Pregnancy (MTP) because, as the World Economic Forum has found in their research, denying women access to abortion, triggers outcomes that reverberate throughout their lives,



impacting everything from the school years, how much they earn and live in future.

10. Margaret Atwood, who authored the landmark novel on Dystopian Patriarchy titled the “The Handmaid's Tale”, wrote that, “for every headline about gains in reproductive rights, there seem to be others underscoring how fragile these are, wherever you live”.

11. The UN Working Group on discrimination against women and children has expressed deep concern about severe challenges to the universality of women’s rights in the global community. It is worth reminding ourselves that human rights - which include the rights without discrimination to: equality, dignity, autonomy, information, bodily integrity, respect for private life, the highest attainable standard of health, including sexual and reproductive health and freedom from inhuman and degrading treatment - are now virtually recognized to be sacrosanct.

12. The United Nations have declared that the right of a woman or girl to make an autonomous decisions of her own



body and reproductive functions, is an undeniable basic right to equality, privacy and bodily integrity.

13. This Court has begun this judgment with this exordium because, it is without doubt that the decision to continue a pregnancy or terminate it, may shape the women's entire future life, as well as her family life; and this decision will have a crucial impact on her enjoyment of other human rights.

14. The decision is, therefore, functionally and primarily, the women's decision and ought to be only the women's decision.

15. The petitioner in this case is a young lady, who is carrying a pregnancy of about 23 weeks, who says she is now separated from her husband – the 5th respondent herein. She alleges that she has been subjected to cruelty by her husband and narrates several such instances in the Memorandum of this Writ Petition; and asserts that she had, therefore, been forced to approach the jurisdictional Family Court, seeking divorce. She says that she is, therefore, in a very fragile psychological position, being forced to carry a pregnancy, even while she has



no control of her future and does not know how it is to shape, in the days to come.

16. The petitioner alleges that her husband has no care for her, or the child, which is manifest from Ext.P4, which is the objection filed by him before the Family Court, wherein, he alleges that she is *“seeking permission to do MTP only with an ulterior motive to kill the fetus with an intention to go for a second marriage and a lady without child”* (sic). She then submits that she had, therefore, moved the Family Court for permission to terminate her pregnancy; and that the said Court has now issued Ext.P5 order, granting her liberty to do so, if conditions specified in Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 (‘MTP Act’ for short) are satisfied. She says that, consequent thereto, when she approached medical practitioners for such purpose, they refused to act without orders from Courts because, technically and *de jure*, she still continues to be married, though in effect and *de facto*, she has been deserted by her husband and is facing the prospect of a very uncertain future.

17. Smt.R.Leela – learned counsel for the petitioner, impressed upon me the difficult period through which her



client is presently travelling, asserting that the pressure of having to carry the pregnancy, along with the prospect of being in a situation where she will have to litigate and fight for her rights, has cast great amount of stress on her and is presently in a tenuous psychiatric state. She submitted that the continuation of the pregnancy by her client would be seriously deleterious to her – endangering not only her emotional status, but also her physical health; and therefore, that she is entitled to be granted an order to terminate it, under the provisions of the “MTP Act”. She argued that, since the pregnancy has not exceeded 24 weeks, the provisions of Section 3(2)(b) of the “MTP Act” would come into play, since the continuation of the pregnancy poses great injury to her mental health, as also physically. She thus prayed that the reliefs sought for in this writ petition be granted.

18. Noticing the afore specific contentions of the petitioner and since, during the discussions at the Bar when this matter was considered earlier, there arose a justified doubt whether the petitioner can be granted benefits under Section 3(2)(b) of the “MTP Act” read in conjunction with Rule 3B of the Medical Termination of Pregnancy Rules, 2003 (‘MTP



Rules' for short), I requested Smt.Pooja Menon to assist me as an Amicus Curiae.

19. Before I go forward, I must also record that, on 19.02.2024 when this matter was called, the learned Government Pleader – Smt.Vidya Kuriakose, had fairly submitted that, it is the choice of the petitioner which should be the fundamental *sine qua non* for any decision in this case; and being in affirmation and thus guided by such sentiment, this Court indited an order on that day, which is as under:-

“This is a rather strange case where the petitioner wants medical termination of her pregnancy, primarily because she is going through a divorce.

2. There are corollary allegations against her husband, including that he had forced himself on her, which constitutes marital rape and such other.

3. No doubt, the petitioner is going through very difficult times in her life, faced with a pregnancy and an impending divorce. Primary indications from the pleadings make it discernible that she is suffering psychologically, more than physiologically; but this Court does not have information on this affirmatively, including on the condition of the child.

4. The learned Government Pleader - Smt.Vidya Kuriakose, submitted that, if this Court is so inclined, a Medical Board can be constituted at the Ernakulam Medical College and that the petitioner and her child can be evaluated comprehensively, both physiologically and psychologically.



5. I have no doubt that the afore suggestion of the learned Government Pleader is the most apposite. I, therefore, suo motu implead the Superintendent, Ernakulam Medical College, Kalamassery, as an additional respondent and record that Smt.Vidya Kuriakose takes notice on his behalf.

6. The additional respondent is hereby directed to constitute a Medical Board, consisting of doctors to evaluate the petitioner and her child, both physiologically and psychologically, so as to file a report before this Court by the next posting date.

7. The petitioner will consequently appear before the 6th respondent – Superintendent, at 11 a.m. on 20.02.2024, on which day, the afore evaluation shall be done. The consequential report shall be made available to this Court on 23.02.2024.

8. Before I conclude, I direct that the identity of the petitioner be anonymized in this writ petition and all documents, and this shall be completed by the Registry forthwith.”

20. I had passed the afore order and had requested the petitioner to be examined by a Medical Board, being fully aware that, going by Section 3(2)(b) of the “MTP Act”, what was statutorily required is only the opinion of two registered Medical Practitioners, the pregnancy being below 24 weeks, because her physiological as well as psychological evaluation was found to be necessary, adverting to the various averments in the pleadings, as also the submissions made at the Bar.



21. The said report having been produced by the learned Government Pleader, along with her Memo dated 22.02.2024, which reads as under:

“Medical board held on 20/02/2024 at 12.30 pm in the Superintendent's Office Control room Government Medical College Hospital, Ernakulam as per the order of Honourable High Court (W.P (C) No. 6527 of 2024

1. Opinion of Dr. Anilkumar.T.V, Professor & HOD- Psychiatry, GMCH-Ekm

The petitioner was interrogated in detail She was cooperative. Rapport was established Talk was relevant and coherent. At present there is no evidence of major mental illness She already has filed divorce petition in the court and has expressed her strong desire to not continuing the marriage as well as the pregnancy. Since the mother is proceeding divorce, continuation of pregnancy will negatively affect the emotional health of the mother.

2. Opinion of Dr.Preetha Prabhakaran, Assistant Professor, O& G department, GMCH- Ekm

Amniocentesis was done on 05/01/2024 and was normal fetal Karyotype. Physiologically continuation of pregnancy will not affect the physical health of the mother For Medical termination of pregnancy less than 24 weeks consent from mother only is required She is at present 22 weeks 4 days Ultrasound was done on 12/12/2023, Fetus was 12 weeks 4 days Placenta was seen completely covering the internal OS. So repeat scan is advised to assess the placental site. If MTP is planned it can lead to severe haemorrhage blood transfusion may be needed. Since the pregnancy is more than 22 weeks 4 days repeated medical and surgical methods may be needed and complications like bleeding, infection.



perforation etc can occur and it has been explained to the patient.

3. Opinion of Dr.Suny Thomas, Professor & HOD-Radiology, GMCH-Ekm

Ultrasound was done on 12/12/2023 Fetus was 12 weeks 4 days. NT was 3.6 mm more than 95th centile. Amniocentesis was done on 05/01/2024 and was normal fetal Karyotype. Hence the fetus is apparently normal

4. Opinion of Dr. Sindhu Thomas Stephen. Assistant Professor, Paediatrics, GMCH- Ekm

Since the fetus is only 22 weeks 4 days if MTP is done baby is unlikely to survive. No resuscitation will be done since the baby is less than 24 weeks.

Recommendation

Fetus is apparently normal and the continuation of pregnancy may not cause any risk to the life of mother or her physical health But there is a high possibility that the continuation of pregnancy can adversely affect her mental health.

Conclusion

Termination of pregnancy may be done if patient is willing to accept the risks to the mother as explained in detailed above.”

22. Smt.Pooja Menon - learned Amicus Curiae, has filed a short, but comprehensive, ‘preliminary report’, detailing various germane aspects, as would be applicable to this case. The report starts by extracting the statement of objects and reasons of the Medical Termination of Pregnancy Amendment Act, 2021, to be *‘a step towards safety and well being of women*



and will enlarge the ambit and access of women to safe and legal abortion without compromising on safety and quality of care. The proposal will also ensure dignity, autonomy, confidentiality and justice for women, who need to terminate pregnancy' (sic).

23. Smt.Pooja Menon, thereafter, has made available the extracts of the Parliamentary debate on the afore bill, which, for the sake of full reading, is extracted as under:

"B. PARLIAMENTARY DEBATES

Per the Reference Note No.22/RN/Ref/December/2022 uploaded on the Lok Sabha Documents website, the followings excerpts from the Parliamentary Debates on the MTP Amendment Bill, 2020, may be seen;

- India will now stand amongst nations with a highly progressive law, which allows legal abortions on a broad range of therapeutic, humanitarian and social grounds.
- According to 2017 data, 59 countries allowed elective abortions, of which only seven permitted the procedure after 20 weeks like Canada, China, the Netherlands, North Korea, Singapore, the United States, and Vietnam. Now, India has joined them.
- Criminalisation stigmatizes abortions.... This stigmatization forces women to seek unsafe abortions which are often carried out at unregistered facilities by unqualified practitioners.
- The issue of unwed pregnancies is a key issue that needs urgent attention. Modern times bring



about new problems and handling them needs to be modern as well.

- The Bill also applies to unmarried women and therefore, relaxes one of the regressive clauses of the 1971 Act.
- In our country today 56 per cent of abortions are unsafe, out of 6.4 million annual abortions in India, 3.6 million are unsafe resulting in 13 per cent maternal deaths in India. So, to prevent these maternal deaths, we need safe abortion.
- This Bill assumes greater significance as the Sustainable Development Goal for India which aims to bring down the maternal mortality ratio from the current level of 122 per lakh live births to 70 per lakh live births by 2030.
- We are now among the countries with the highest upper gestational limit, and that is truly commendable.”

24. The learned Amicus Curiae then submitted that the Hon'ble Supreme Court, in *X v. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another* [(2023) 9 SCC 433], has reiterated the necessity of purposive construction of beneficial legislations, giving it the widest possible amplitude, to enable individuals in non traditional family structures also, to avail the benefits under the “MTP Act”. Smt.Pooja Menon explained that, as far as the petitioner in this case is concerned, since her pregnancy does not exceed 24 weeks, she would be entitled to seek its



termination, provided she is able to establish that there is a change of “marital status” in her life, at this point of time.

25. The learned Amicus Curiae expatiated that, she is saying so because, Section 3(2)(b) of the “MTP Act” provides that, where the length of pregnancy does not exceed 24 weeks, such category of women as may be prescribed by the “MTP Rules”, can seek its termination, on the opinion of a minimum of two registered practitioners. She then took me through the provisions of Rule 3B of the “MTP Rules” to point out that, the enumerated categories of women thereunder, for the purpose of the afore statutory provision, includes those who face “change of marital status during the ongoing pregnancy (widowhood and divorce)”. Pertinently, she relied upon *X v. Principal Secretary (supra)*, to further argue that, the concept of “change of marital status” has been given very wide breadth by the Hon’ble Supreme Court, holding that it does not mean merely that a person is continuing in a marriage or otherwise, but that it is the “material circumstances relating to it” which are important. She submitted that, therefore, when the petitioner says that she has been pushed to a situation, where she has been constrained to file a divorce petition



against her husband – the 5th respondent, it must be construed that her “material circumstances” have been altered, thus construing her marital status also to be changed. She predicated that, in **X v. Principal Secretary** (*supra*), the Hon'ble Supreme Court has declared unequivocally that the categories of women in Rule 3B of 'MTP Rules', as also the criteria with respect to change of status mentioned therein, are only illustrative in nature; being inclusive and not exclusive. She thus firmly recommended that this writ petition be allowed because, it would be too much for the petitioner to be asked to prosecute the litigation she has launched, thus having to face all the pressures and prejudice that come with it; while carrying a pregnancy - which, in her opinion, would also be extremely deleterious to the health of the foetus, especially in the long run.

26. Smt.Vidya Kuriakose - learned Government Pleader, as I have already said above, did not oppose this writ petition at all, but forewarned this Court to consider the factum of the rights of the foetus also, side by side. She, however, conceded that, when the law permits the termination of pregnancy before 24 weeks, this aspect may not be very relevant, particularly



when the medical report on record indicates that if the petitioner is forced to carry it, it would be dangerous to both her physiological and psychological health, thus casting serious repercussions on the foetus and the child to be born. She, therefore, left it to this Court to take an apposite decision; however, agreeing with Smt.Pooja Menon – learned Amicus Curiae, that the forensic arena has been very widely interpreted by the Hon'ble Supreme Court in **X v. Principal Secretary** (*supra*), while dealing with the concept of “marital status”.

27. Smt.Shylaja Varghese, appearing for the fifth respondent, responded to the afore submissions, saying that her client refutes all the factual allegations of the petitioner, but does not stand in the way of relief being granted to her because, it is finally her choice. She, however, added that her client will not be willing to accept the petitioner if she undertakes the termination of pregnancy; and conceded that there are deep stated differences between them, which are now being considered by the jurisdictional Family Court.

28. The afore being recorded, it is rendered without doubt that most of the facts relevant to this case are undisputed;



while there is also substantial consensus on the legal aspects involved.

29. *Quoad hoc* the circumstances presented in this case, the petitioner is carrying a pregnancy which is less than 24 weeks, as on date. She says that she has been separated from her husband and has filed a petition for divorce against him, on various grounds – the merits of which are not relevant to this Court at all at this stage, as they are within the exclusive scope of consideration of the jurisdictional Family Court.

30. However, what is important in this matter is the assertion of the petitioner that, she is facing depressive and emotional turmoil since she faces an uncertain future after a divorce; and hence that the prospect of carrying the pregnancy itself becomes a rigor on her emotional health, which surely would lead to her physical ill-being.

31. Of course, this Court cannot be guided by emotional fasciculus alone and the petitioner can be granted any benefit only if I am convinced that the statutory matrix permits so.

32. As rightly pointed out by Smt.Pooja Menon, learned Amicus Curiae, Section 3(2)(b) of the 'MTP Act' allows a



woman to seek termination of pregnancy, if it does not exceed 24 weeks, provided she falls into the category of those who are enumerated by the 'MTP Rules'; for which, she is only required to be supported by the opinion of two registered medical practitioners, that the continuance of the pregnancy would involve, *inter alia*, a risk to her life, or of great injury to her physical or mental health.

33. Turning to the 'MTP Rules', Rule 3B thereof, delineates the categories of women who shall be eligible for termination of pregnancy under the afore provision; and will include, *inter alia*, other women who face “*change of marital status during the ongoing pregnancy (widowhood or divorce).*”

34. A legitimate question props up in this case, as to whether the petitioner would fall within this category, since her “marital status” has not yet changed, viewed from the prism of the legal status she is presently in. Added to this is a question whether the petitioner can be allowed to take advantage of this exception and say that she faces a change of “marital status” when she herself has initiated divorce proceedings against her husband.



35. In this aspect, I am fully guided by the judgment of the Hon'ble Supreme Court in **X v. Principal Secretary** (*supra*).

36. As has been correctly pointed out by Smt.Pooja Menon, after considering the statement of objects and reasons for the 'MTP Act', the Hon'ble Court has held, in paragraph 51, of the said judgment that *“the whole tenor of the MTP Act is to provide access to safe and legal medical abortions to women. The MTP Act is primarily a beneficial legislation, meant to enable women to access services of medical termination of pregnancies provided by an RMP. Being a beneficial legislation, the provisions of the MTP Rules and the MTP Act must be imbued with a purposive construction. The interpretation accorded to the provisions of the MTP Act and the MTP Rules must be in consonance with the legislative purpose”*.

37. Thereafter, in paragraph 64, the concept of mental health was discussed comprehensively; and the declarations therein are very pertinent and therefore require to be read in full, for which it is extracted *ut infra*:

“The expression "mental health" has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The World Health



Organization defines mental health as a state of "mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well, and contribute to their community." The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context. Our understanding of the term mental health cannot be confined to medical terms or medical language, but should be understood in common parlance. The MTP Act itself recognizes the need to look at the surrounding environment of the woman when interpreting injury to her health. Section 3(3) states that while interpreting "grave injury to her physical or mental health", account may be taken of the pregnant woman's actual or reasonably foreseeable environment. The consideration of a woman's "actual or reasonably foreseeable environment" becomes pertinent, especially when determining the risk of injury to the mental health of a woman."

38. The Hon'ble Court, thereafter, went into the interpretation of the phrase "marital status" in the "MTP Act" and the Rules thereunder, to affirmatively declare as below:

"89 Rule 3B(c) states that a "change in the marital status during the ongoing pregnancy (widowhood and divorce)" renders women eligible for termination of their pregnancy under Section 3(2)(b). The impact of the continuance of an unwanted pregnancy on a woman's physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3B(c) is comparable to the rationale for Rule 3B(g) i.e., a change in a woman's material circumstances during the ongoing pregnancy.

90. Rule 3B(c) is based on the broad recognition of the fact that a change in the marital status of a woman often leads to a change in her material circumstances. A change in material circumstance during the ongoing pregnancy may arise when a married woman divorces her husband or when he dies, as recognized by the



examples provided in parenthesis in Rule 3B(c). The fact that widowhood and divorce are mentioned in brackets at the tail end of Rule 3B(c) does not hinder our interpretation of the rule because they are illustrative.

91. A change in material circumstance may also result when a woman is abandoned by her family or her partner. When a woman separates from or divorces her partner, it may be that she is in a different (and possibly less advantageous) position financially. She may no longer have the financial resources to raise a child. This is of special concern to women who have opted to be a homemaker thereby forgoing an income of their own. Moreover, a woman in this situation may not be prepared to raise a child as a single parent or by coparenting with her former partner. Similar consequences may follow when a woman's partner dies.

92. Women may undergo a sea change in their lives for reasons other than a separation with their partner (Rule 3B(c)), detection of foetal "abnormalities" (Rule 3B(f)), or a disaster or emergency (Rule 3B(g)). They may find themselves in the same position (socially, mentally, financially, or even physically) as the other categories of women enumerated in Rule 3B but for other reasons. For instance, it is not unheard of for a woman to realise that she is pregnant only after the passage of twenty weeks. Other examples are if a woman loses her job and is no longer financially secure, or if domestic violence is perpetrated against her, or if she suddenly has dependents to support. Moreover, a woman may suddenly be diagnosed with an acute or chronic or life-threatening disease, which impacts her decision on whether to carry the pregnancy to term. If Rule 3B(c) was to be interpreted such that its benefits extended only to married women, it would perpetuate the stereotype and socially held notion that only married women indulge in sexual intercourse, and that consequently, the benefits in law ought to extend only to them. This artificial distinction between married and single women is not constitutionally sustainable. The benefits in law extend equally to both single and married women.

93. A recognition of the fact that there may be a change in a woman's material circumstance animates Rule 3B(c), Rule 3B(g) and Rule 3B(f). However, Rule 3B



does not enumerate all the potential changes that a woman's material circumstances may undergo. It merely specifies some of the potential changes to a woman's material circumstances, in sub-rules (c), (f) and (g). From the object and purpose of the MTP Act, its overall scheme, and the categories of women specified in Rule 3B, it is evident that it was not the intention of the legislature to restrict the benefit of Section 3(2)(b) and Rule 3B only to women who may be confronted with a material alteration in the circumstances of their lives in the limited situations enumerated in Rule 3B. Rather, the benefit granted by Rule 3B must be understood as extending to all women who undergo a change of material circumstances.

94. It is not possible for either the legislature or the courts to list each of the potential events which would qualify as a change of material circumstances. Suffice it to say that each case must be tested against this standard with due regard to the unique facts and circumstances that a pregnant woman finds herself in."

39. Interestingly, the Hon'ble Supreme Court then considered the right of dignity of a woman, to declare, in paragraph 116 of the judgment, that *"in the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the state. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being*



also injures the dignity of women”.

40. With the afore declarations illuminating my way, it would not be necessary for me to now hesitate from granting any relief to the petitioner because, it is luculently demonstrated in the factual matrix presented, that she is certainly facing change in her material circumstances *vis-a-vis* the fact that she has been separated from the fifth respondent and is litigating against him for divorce, particularly because she cites cruelty as a primary ground.

41. No doubt, “marital status”, in its semantic sense, is a legally defined marital state; but it is well recognised that there are several types of such changes, namely single, married, widow, divorced, separated etc.

42. Apodictically, *de jure* marital status certainly is a factum of an individual continuing in the marital bond in the legal sense; while, it is surely possible to perceive a *de facto* marital status simultaneously, where such a person is either separated, abused or subjected to exploitation.

43. The relevance of “marital status” has a direct reflection on women's physical and mental well-being and



when Rule 3B of the 'MTP Rules' adopts the words “widowhood and divorce” in brackets, while defining the change of marital status, it certainly points to a factual situation where a woman suffers immeasurably on account of the circumstances that she is subjected to.

44. As has been exhaustively explained by the Hon'ble Supreme Court in **X v. Principal Secretary** (*supra*), when a woman goes through such a change in her life, she is subjected to a intense response from her own body and mind, being in a state of confusion and without an idea as to how her future life will shape out. The physiological challenges of a young mother-to-be; and the rigor of pregnancy would be sufficient to take a toll on both her physical and psychological well-being, especially, if she is not surrounded and enveloped by an atmosphere, required for the full blooming of the foetus into a healthy child. The hormonal changes that a woman would go through when subjected to extreme stress and distress and the psychological pressure that she would have to endure, having to balance the pregnancy with events in her life - over which she may not have control in future, certainly would justify the plea of change of “marital status” within the ambit of Rule 3B



of the 'MTP Rules'.

45. As I have already said above and to merely reiterate, it is my firm view that “marital status” cannot be construed to be merely *de jure*, when it comes to the interpretation of the 'MTP Rules', but can also be *de facto*, where a woman, though married, may effectively be without the benefit of any such and subjected to prejudice on account of the varied circumstances, which she alone will have to endure and suffer.

46. Such a scenario would never be conducive to the health of the foetus, or to its development to a baby; and from that angle also, the word “marital status” assumes great importance because, if it is to be assumed to be only *de jure*, then it would defeat the very purpose for which it has been engrafted, which is essentially for the benefit of the young mother to be and the foetus within her.

47. As long as it is the responsibility of the mother to be fully in charge of the foetus growing within her, her wishes and needs have to be given the paramountcy it deserves, and to be treated with the respect it behooves.

48. In such perspective, the factum of the petitioner in



this case, having filed a case for divorce against her husband, would be of no relevance at all, when viewed from the angle of her assertion that, she was forced to do so because of his alleged cruel conduct to her.

49. There is one more compelling reason, which persuades me to find in favour of the petitioner, namely that it is well recognised that legal processes take much longer duration than the pregnancy itself. The 'MTP Act', however, places an embargo on termination of pregnancy after 24 weeks, except in specified circumstances, which are again, beyond the control of the women.

50. As noticed above, the petitioner is now in her 24th week of pregnancy and should this Court wait, either hoping that the couple would reconcile, or that the legal proceedings would complete, it would be disastrous to her since, if she is to finally be divorced as she wants, she certainly would be without support and in charge of a child, whom she may not be in a position to support and care for.

51. Though not impelled in any manner by the fifth respondent, Smt.Pooja Menon - learned Amicus Curiae,



perhaps, by way of abundant caution, also brought to my notice that, while dealing with these matters, the consent of the husband is immaterial and irrelevant. I have no doubt that she is right because, her opinion travels with the sentiment of this Court, which has already been reflected in the earlier paragraphs of this judgment, more so because, there is no statutory requirement for the woman to obtain any such consent from her partner or husband.

52. In other words, a third party affirmation of women's intent is beyond the statutory scheme and an anathema to the bodily autonomy of any woman.

53. In summation and for the afore reasons, I allow this writ petition and permit the petitioner to undergo medical termination of her pregnancy, but at the Medical College Hospital, Ernakulam, from where the opinion of the Medical Board has been placed on record.

54. That being said, since the petitioner will complete her 24 weeks of pregnancy in the next few days, I also accede to her request that she be allowed to undergo the procedure tomorrow itself; for which, I record that Smt.Vidya Kuriakose -



learned Government Pleader has already conferred with the Superintendent of the Medical College, Ernakulam and obtained concurrence.

55. Needless to say, therefore, the petitioner will be at liberty to present herself before the Superintendent, Medical College Hospital, Ernakulam, at 11 a.m. tomorrow (29.02.2024), who will thereupon proceed to take necessary action in fructification of the directions herein as per law and in full compliance with all imperative and necessary medical protocols.

56. It goes without saying that the opinion of the Assistant Professor, O&G Department, as included in the report of the Medical Board that - since the pregnancy is more than 22 weeks and 4 days, repeated medical and surgical methods may be needed and complications like bleeding, infection, perforation etc. can occur - will be explained to the petitioner, when she appears tomorrow and her informed consent obtained, before the procedure is commenced. I, however, record the submissions of her learned counsel, Smt.R.Leela, that her client is fully aware of these complications, which are endemic to any such procedure and



that she wants to go through, for the reasons that have already been stated above.

The commendation of this Court for Smt.Pooja Menon certainly will be in order because, though she has been given only a day to prepare, she has responded with a Note, which is exhaustive in nature, taking within its fold every relevant and germane input; which helped this Court to deliver a judgment in the shortest period of time, adverting to the emergency that the situation presents.

Sd/- DEVAN RAMACHANDRAN

JUDGE

stu



APPENDIX OF WP(C) 6527/2024

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE O.P 225/24 PENDING BEFORE THE FAMILY COURT ERNAKULAM.
- Exhibit P2 THE TRUE COPY OF I.A NO 4/24 IN O.P 225/24 FILED IN FAMILY COURT ERNAKULAM
- Exhibit P3 THE TRUE COPY OF THE MEDICAL CERTIFICATE DATED 6-2-24 ISSUED BY DR.INDU B.R
- Exhibit P4 THE TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN I.A 4/24 IN OP 225/24
- Exhibit P5 THE TRUE COPY OF THE ORDER DATED 16.2.24 IN I.A NO 4/ 2024
- Exhibit P6 THE TRUE COPY OF THE OP CONSULTATION TOKEN NO 8 ISSUED BY MEDICAL COLLEGE HOSPITAL ERNAKULAM
- Exhibit P7 THE OP CONSULTATION TOKEN NO 102 ISSUED BY GENERAL HOSPITAL ERNAKULAM