

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 02nd OF JANUARY, 2024

WRIT PETITION No.31448 of 2023

BETWEEN:-

"A" MINOR GIRL THROUGH FATHER

.....PETITIONER

(BY SHRI VIJAY SHUKLA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH IT'S PRINCIPAL SECRETARY, PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT, MINISTRY, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. CHIEF MEDICAL OFFICER, TILI DISTRICT HOSPITAL, GYNECOLOGIST DEPARTMENT, SAGAR DISTRICT SAGAR (MADHYA PRADESH)**
- 3. STATION HOUSE OFFICE, POLICE STATION CANTONMENT SAGAR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI K.S. BAGHEL - GOVERNMENT ADVOCATE)

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This petition coming on for orders this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed seeking following relief(s):-

- "(1) Issue a writ in the nature of mandamus permitting the petitioner to disorder pregnancy of 08 weeks 05 days of minor girl "A", in the interest of justice.
- (2) Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case including cost of the litigation may kindly be awarded in favour of the petitioner."

2. It is submitted by counsel for petitioner that on the report of prosecutrix, an offence under Sections 376, 376(2)(n) of IPC, Sections 5L, 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO, 2012') and under Sections 3(1)(w)(i), 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been registered. It is the case of petitioner that she is minor. Her date of birth is _____ and has also filed a copy of birth certificate issued by Registrar (Birth & Death), Municipal Corporation Sagar on _____. It is the case of petitioner that she is aged about 17 years. Mother of prosecutrix was working as a maid servant in the house of one _____. In the said house, accused Kapil Lodhi was also working as Computer Operator. He used to have light talks with the prosecutrix. With passage of time, he developed a physical relationship with her on the pretext of marriage. Thereafter prosecutrix shifted along with her parents to Delhi and accused continued to talk to the prosecutrix on phone. On 23/10/2023, prosecutrix came to Sagar and accused came to Bhagwanganj station to meet her and thereafter he took her to Khurai by train. Accused again had a physical relationship in isolated place near railway station. However, under the apprehension of disrepute, she did not lodge the report. Later on, she came to know that she is pregnant.

Accordingly, it was alleged that she has got pregnant on account of rape committed by accused on 23/10/2023. On this report, FIR No.894/2023 has been registered at Police Station Cantonment Sagar, District Sagar. It is submitted by counsel for petitioner that since prosecutrix is minor, therefore question of her consent has no relevance. It is further submitted that even at the time of pregnancy, prosecutrix has narrated the same story to the Doctor which is also mentioned in MLC (Annexure-P/3). It is the case of petitioner that since petitioner is minor and her pregnancy will not be in the interest of petitioner as well as in the interest of child, therefore it is prayed that petitioner may be permitted to get her pregnancy terminated.

3. Considered the submissions made by counsel for petitioner.
4. This Court by order dated 22/12/2023 had directed the Chief Medical and Health Officer, Sagar to get the petitioner examined by a team comprising of one Gynecologist and one Psychiatrist and to submit the report.
5. Medical report has been submitted along with I.A. No.17212/2023 filed on 30/12/2023. Petitioner was medically examined by In-charge, Gynecology Department, District Hospital Sagar, Senior Medical Officer, Gynecology Department, District Hospital Sagar and Assistant Professor, Psychiatry Bundelkhand Medical College, Sagar and submitted a report that medical termination of pregnancy is possible.
6. From birth certificate as well as FIR, it is clear that prosecutrix is minor. It is her allegation that she was raped by accused and only on account of rape, she has conceived.
7. Sections 3 and 5(1) of the Medical Termination of Pregnancy Act 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 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.

5. Sections 3 and 4 when not to apply.- (1) The provisions of Section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a 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.”

8. This Court is dealing with the case of a child aged about 17 years, who is carrying a child of a rapist and father of the prosecutrix does not want that prosecutrix should give birth to the child of a rapist. Not only this, the child will also have social stigma throughout her life and the girl, who is 17 years of age, has to deliver a child which will certainly result in life threat to the pregnant minor girl.

9. The Supreme Court in the case of **Murugan Nayakkar Vs. Union of India & Ors.** in **Writ Petition (Civil) No.749/2017** by order dated **6/9/2017** has held as under:-

“The petitioner who is a 13 years old girl and a victim of alleged rape and sexual abuse, has preferred this writ petition for termination of her pregnancy. When the matter was listed on 28.8.2017, this Court has directed constitution of a Medical Board at Sir J.J. Group of Hospitals, Mumbai. Be it noted, this Court had also mentioned the composition of the team of doctors. The petitioner has appeared before the Medical Board on 1.9.2017 and the Medical Board that has been constituted by the order of this Court expressed the opinion that the termination of pregnancy should be carried out. That apart, it has also been opined that termination of pregnancy at this stage or delivery at term will have equal risks to the mother. The Board has also expressed the view that the baby born will be preterm and will have its own complications and would require Neonatal Intensive Care Unit (N.I.C.U.) admission.

We have heard Ms. Sneha Mukherjee, learned counsel appearing for the petitioner, Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of pregnancy should be allowed.

In view of the aforesaid premise, we direct the petitioner to remain present at the Sir J.J. Group of Hospitals, Mumbai in the evening of

7.9.2017 so that the termination of pregnancy can be carried out preferably on 8.9.2017. Mr. Nishant R. Katneshwarkar shall apprise the Dean of Sir J.J. Group of Hospitals, Mumbai so that he/she can make necessary arrangements for termination of the pregnancy.

A copy of the order passed today be handed over to learned counsel for the petitioner and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

The writ petition is accordingly disposed of. There shall be no order as to costs.”

10. In light of the aforesaid judgment, considering the age of the girl, trauma which she has to suffer and the agony she is going through at present and also keeping in view the aforementioned medical report, this Court is of the opinion that the prayer made by petitioner and her father deserves to be allowed and is accordingly allowed.

11. The respondents are directed to carry out termination of pregnancy immediately. The Chief Medical & Health Officer, District Sagar is directed to admit the child (prosecutrix) **latest by 05th January, 2024**, and termination of pregnancy be carried out as early as possible subject to the medical complications. The fetus shall be protected and shall be sent for DNA test along with blood sample of the petitioner as well as the blood sample of the accused.

12. It is needless to mention that the Head of the Department of Gynecologist, Head of the Department of Anesthesia and all other Specialists will remain present at the time when termination of pregnancy will be carried out, as the girl is of tender age and as there may be a threat to the life of the girl also. Not only this, after the termination of pregnancy is carried out, the State of Madhya Pradesh shall ensure postoperative care of the girl (prosecutrix).

13. The High Court of Bombay in the case of **Shaikh Ayesha Khatoon Vs. Union of India and Others** reported in **2018 SCC OnLine Bom 11** has dealt with the issue of termination of pregnancy beyond 27 weeks as there was several fetal anomalies including a congenital malformation. The Bombay High Court in the aforesaid case while dealing with most of the judgments of the Apex Court in paragraph No.14 to 28 has held as under:-

“14. As has been recorded above, the freedom of a pregnant woman of making choice of reproduction which is integral part of "personal liberty", whether to continue with the pregnancy or otherwise cannot be taken away. It shall also be taken into consideration that besides physical injury, the legislature has widened the scope of the termination of pregnancy by including "a injury" to mental health of the pregnant woman. Thus, if continuance of pregnancy is harmful to the mental health of a pregnant woman, then that is a good and legal ground to allow termination of pregnancy if all the conditions incorporated in legal provision are met. In the instant matter the petitioner claims that it would be injurious to her mental health to continue with the pregnancy since there are severe foetal abnormalities noticed and it would also be violative of her "personal liberty" to deny her the choice to terminate the pregnancy. The provisions of Section 5 of the Act of 1971 shall have to be interpreted in the manner for advancing the cause of justice. In this context it would be appropriate to refer to the judgment of Division Bench of this Court in the matter of High Court on its own motion vs. the State of Maharashtra, reported in 2017 CriL.J. 218. In paragraph-13 of the judgment, it is observed thus:

"13. A woman irrespective of her marital status can be pregnant either by choice or it can be an unwanted pregnancy. To be pregnant is a natural phenomenon for which woman and man both are responsible. Wanted pregnancy is shared equally, however, when it is an accident or unwanted, then the man may not be there to share the burden but it may only be the woman on whom the burden falls. Under such circumstances, a question arises why only a woman should suffer. There are social, financial and other aspects immediately attached to the pregnancy of the woman and if pregnancy is unwanted, it can have serious repercussions. It undoubtedly affects her mental health. The law makers have taken care of helpless plight of a woman and have enacted Section 3(2)(b)(i) by incorporating the words "grave injury to her mental health". It is mandatory on the registered medical practitioner while forming opinion of necessity of termination of pregnancy to take into account whether it is injurious to her physical or mental health. While doing so, the woman's actual or reasonable foreseeable environment may be taken into account."

15. While interpreting the provisions of Section 5 of the Act of 1971, it must be borne in mind the principle that the section must be construed as a whole whether or not one part is a saving clause and similarly elementary rule of

construction of section is made of all the parts together and that it is not permissible to omit any part of it; the whole section must be read together. The words of Statute are first understood in their natural, ordinary and popular sense and phrases and sentences are construed according to their grammatical meaning unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in special sense different from their ordinary grammatical meaning. The basic principle that while interpreting the provisions of a Statute one can neither add nor subtract even a single word, has to be kept in mind. A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, it is not open to the Court to add and amend, or by construction, make up for the deficiencies, which has been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same produces an intelligible result. [Vide *Nalinakhya Bysack v. Shyam Sunder Haldar and ors.*, AIR 1953 SC 148; *Sri Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459; *M. Pentiah and Ors. v. MuddalaVeeramallappa and Ors.*, AIR 1961 SC 1107; *The Balasinor Nagrik Co-operative Bank Ltd. v. Babubhai Shankerlal Pandya and Ors.*, AIR 1987 SC 849; and *Dadi*

Jagannadham v. Jammulu Ramulu and Ors., (2001) 7 SCC 71].

16. In the matter of New India Assurance Company Ltd. v. Nusli Neville Wadia and another, (2008) 3 SCC 279, the Hon'ble Supreme Court while referring to the analysis of purposive construction has observed in paragraph-52 as narrated below:

"52. Barak in his exhaustive work on 'Purposive Construction' explains various meanings attributed to the term 'purpose'. It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

"Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation allows the interpreter to

inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

(Aharon Barak, Purposive Interpretation in Law (2007) at pg. 87)

17. A statute must be interpreted having regard to the purport and object of the Act. The doctrine of purposive construction must be resorted to. It would not be permissible for the Court to construe the provisions in such a manner which would destroy the very purpose for which the same was enacted. The principles in regard to the approach of the Court in interpreting the provisions of a statute with the change in the societal condition must also be borne in mind. The rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled.

18. The two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. In regard to the latter principle, the following statement of law appears in Maxwell at page 47:

"A statute is to be read as a whole - "It was resolved in the case of Lincoln Colleges case (1595) 3 Co Rep. 58B, at page 59b that the good expositor of an Act of Parliament should make construction on all the parts together, and not of one part only by itself. Every clause of a statute is to be construed with

reference to the context and other clauses of the act, so as, as far as possible, to make a consistent enactment of the whole statute. (Per Lord Davey in *Canada Sugar Refining Co. Ltd. v. R.* 1898 Act 735 (Canada)."

19. As has been observed by the Supreme Court in the matter of *RBI Vs. Peerless General Finance and Investment Co. Ltd.*, reported in (1987) 1 SCC 424, the textual interpretation that matches the contextual is known to be best interpretation. It is observed in paragraph 33 of the judgment, thus:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each

phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place..."

20. Generally speaking, Statutes are classified in fourfold manner. Firstly, the statutes are remedial, secondly they are declaratory, thirdly they are procedural and lastly they are penal or disentitling. One has to find out the character of the statute as to whether it is penal or not, so as to apply principles of strict construction. In the instant matter it cannot be said that the provisions of the enactment which are relevant for consideration are penal in character. In a way, the provision is remedial and procedural. The provision, therefore, cannot be applied the standards as regards interpretation of a Statute which is penal in character.

21. On analysis of the judgments and the narrations, as recorded above, one must while interpreting the provisions of law, bear in mind that the provision as to be interpreted by reading all of its parts together and it is not permissible to omit any part thereof. The golden rule of interpretation is that the provisions of law have to be read as it is without adding or subtracting anything therefrom. In an appropriate case, the Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven.

22. In the instant matter, on reading of Section 5 of the Act of 1971, it does transpire that the contingencies and the parameters laid down in clauses (i) & (ii) of sub-section (2)(b) of Section 3 shall have to be read in Section 5 except the bar of limitation as provided in Section 3(2)(b) of the

Act of 1971. It would not be appropriate to overlook the contingencies laid down in clauses (i) & (ii) of subsection (2) (b) of Section 3 while considering the request of a pregnant woman for termination of the pregnancy if the conditions laid down in clauses (i) & (ii) of sub-section (2)(b) of Section 3 are satisfied it would provide a good ground for exercise of jurisdiction under Section 5 of the Act of 1971.

23. The Ministry of Health and Family Welfare, Government of Maharashtra has prepared the MTP (Amendment) Bill and the notification in that regard was published on 29.10.2014. The State Government has proposed amendment to Section 3 of the Act of 1973 and clause (C) is proposed to be added which reads thus :

"(C) the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy shall not apply to the termination of a pregnancy by a registered health care provider where the termination of such pregnancy is necessitated by the diagnosis of any of the substantial fetal abnormalities as may be prescribed."

24. Considering the above proposed amendment, according to us, the interpretation which we have put to Section 5 of the Act of 1971 appears to be a logical and same is in consonance with the proposed changes as suggested by the State in the MTP (Amendment) Bill notified on 29.10.2014.

25. The petitioner has restricted the claim in the petition in respect of prayer clause (b)(ii) of paragraph-56 of the Petition. The other prayers recorded by the petitioner in the instant petition are not pressed. Even otherwise, in view of the interpretation which we have put to

Section 5 of the Act of 1971, prayer clause (a), as requested by the petitioner, does not need consideration.

26. For the reasons recorded above, the Writ Petition is allowed. The petitioner is permitted to undergo medical termination of pregnancy at a medical facility of her choice. The petitioner undertakes to report to the approved center for carrying out the procedure of medical termination of pregnancy within two days from today.

27. The Counsel appearing for the petitioner states, on instructions, that the petitioner will bear the medical expenses of the procedure of medical termination of pregnancy at a medical facility of her choice.

28. It is clarified at this stage that the petitioner has been sensitized by the Committee/Medical Board about the risk factors involved and it would be open for the petitioner to undergo the procedure of medical termination of pregnancy at her own risk and consequences. It is further made clear that the Doctors who have put their opinions on record shall have the immunity in the event of occurrence of any litigation arising out of the instant Petition.”

14. In light of the aforesaid judgment, though this Court has already granted permission to carry out termination of pregnancy, but still it is directed that the Doctors who will be part of the process shall have immunity in the event of occurrence of any litigation arising out of the order passed by this Court. It is needless to mention that in case, the Head of the Gynecologist and Head of the Department of Anesthesia are not present, senior Doctors having experience in the field shall carry out the termination of pregnancy.

15. It is directed that before the termination of pregnancy of petitioner, father of petitioner shall submit his affidavit before the CJM, Sagar to the effect that she was subjected to rape by accused Kapil Lodhi and has filed the present writ petition for medical termination of pregnancy of his minor daughter and in the light of the permission granted by this Court, he is ready to get the pregnancy of his minor daughter terminated. Petitioner as well as her father shall also submit an affidavit to the Investigating Officer to the effect that since they have sought medical termination of pregnancy on the allegation of rape by accused Kapil Lodhi, therefore they would not resile from their statement even during the trial.

16. Trial Court is directed to submit its report before Registrar General of this Court along with deposition sheet of prosecutrix in case if she turns hostile and claims that no rape was committed by accused Kapil Lodhi or she claims herself to be major.

17. The Investigating Officer is directed to obtain the certified copy of the said affidavit and shall keep the same in the case diary as well as shall also produce it before the Board and only after its production, the Board shall terminate the pregnancy.

18. With the aforesaid, writ petition stands **allowed**.

(G.S. AHLUWALIA)
JUDGE

S.M.