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Chhattisgarh High Court

Case No: WA No. 427 Of 2019

Vijay Chandrawanshi And Ors		APPELLANT
	Vs	
State Of Chhattisgarh And Ors		RESPONDENT

Date of Decision: Sept. 30, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 363, 366, 376
- Code Of Criminal Procedure, 1973 - Section 164
- Protection Of Children From Sexual Offences Act, 2012 - Section 4, 5

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: NK Malviya, Sidharth Dubey

Final Decision: Dismissed

Judgement

Parth Prateem Sahu, J

1. Appellant-1 is father of appellant-2. The appellants have filed this appeal challenging the impugned order dated 21.08.2019 whereby learned Single

Judge dismissed their WPC-2641 of 2019 seeking relief of permission for termination of pregnancy of appellant-2.

2. Brief facts relevant for disposal of this appeal are that appellant-2 was kidnapped from lawful guardianship of her parents on 20.06.2018.

Missing report was lodged at concerned Police Station and offence punishable under Section 363 of IPC was registered. The missing girl was

recovered on 31.05.2019 from village Parna, district Kishtwad, Jammu and Kashmir and was sent for medical examination. On medical examination it

was revealed that the girl was carrying pregnancy of 3 Â½ months as pleaded by the appellants in Writ Petition. Looking to the girl being minor, her

father made an application before the Civil Surgeon, District Hospital Korba for termination of her pregnancy. Looking to the legal impediment, he

was advised to take appropriate orders from the authorities concerned by taking legal remedy which made the appellants to file Writ Petition before

the High Court.

3. The Writ Petition was filed on 27.07.2019 with the following reliefs:

a. The Hon'ble Court may kindly be pleased allow the instant Writ Petition and permit the petitioner No.2 for termination of the pregnancy which she

is carrying as early as possible.

b. Further may kindly be pleased to issue a appropriate directions to the Respondents for termination of pregnancy. c. Any other relief, order/direction

may be pleased to issue in the facts and circumstances of the case including imposing costs.

4. When the matter came up for hearing, it was directed for medical examination of appellant-2 by Medical Board and the same was submitted by

learned counsel for the respondents. As per medical examination report dated 13.08.2019, there is mention of pregnancy of 20 weeks. Other medical

documents were also placed on record. Learned Single Judge considered the medical report mentioning the length of pregnancy wa 427 of 2019 more

than 20 weeks; its termination may lead to severe bleeding and also may prove to be fatal to life of appellant-2; as also other provisions of Medical

Termination of Pregnancy Act, 1971 (for short, '1971 Act'). Learned Single Judge also took note of submission made by appellant-2 recorded under

Section 164 of the Cr.P.C., further the radiological report for asserting the age of appellant-2, and dismissed the Writ Petition on 21.08.2019.

5. Learned counsel for the appellants submits that as appellant- 2 was subjected to rape and offences punishable under Sections 363, 366 and 376 of

IPC & Sections 4 and 5 of POCSO (Protection of Children from Sexual Offences Act) were registered against one Gautam Kashyap along with

whom appellant-2 eloped. He further submits that as the pregnancy is on account of rape committed on her, therefore, considering the explanation-1

provided under sub-Section 2 of Section 3 of 1971 Act, prayer for termination of pregnancy be allowed.

6. Per contra, learned counsel for respondents/State submits that Section 3(2)(b) provides for granting permission could have been exercised only

when length of pregnancy does not exceed 20 weeks and at present considering the pleading made in the Writ Petition as well as the medical report of

appellant-2, length of pregnancy of appellant-2 appears to be more than 20 weeks and at this stage, there will be danger and threat to life of appellant-

2.

7. We have heard learned counsel for the parties and also perused the impugned judgment passed by learned Single Judge and considered the

provisions of the 1971 Act, particularly, the provisions of Section 3.

8. Provision of Section 3(2)(b) of 1971 Act provides for the termination of pregnancy not exceeding 20 weeks (under prescribed circumstances).

Looking to the medical report, by today, fetus has developed to baby. At this advance stage of pregnancy, there will be danger to the life of appellant-

2 also. Under the 1971 Act, legislature has used the word ""not exceeding twenty weeks"" with purpose. The bar imposed under Section 3(2) can be

made exception only in one circumstance that is to save the life of a pregnant woman. In the case at hand, there is no such medical report, in fact, it is

otherwise that the process of termination of pregnancy will be endanger to the life of appellant-2.

9. Considering the overall facts and circumstances of the case, particularly the fact that as on date, the length of pregnancy of appellant-2 is more than

24 weeks, we are not inclined to allow this appeal.

10. The appeal being devoid of any substance, it is liable to be and is hereby dismissed.