

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945

WP (C) NO. 42678 OF 2023

PETITIONERS:

1 XXXXX
AGED XXXXX YEARS
XXXXX

2 XXXXX
AGED XXXXX YEARS
XXXXX

3 XXXXX
AGED XXXXX YEARS
XXXXX

BY ADVS.
K.M.FIROZ
P.C.MUHAMMED NOUSHIQ

RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY SECRETARY,
DEPARTMENT OF CHILD WELFARE, THYCAUD,
THIRUVANANTHAPURAM, PIN - 695014.

2 THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O,
THIRUVANANTHAPURAM, PIN - 695011.

3 THE SUPERINTENDENT OF GOVERNMENT MEDICAL COLLEGE
HOSPITAL, MANJERI, MALAPPURAM, PIN - 676121.

4 THE HEAD OF DEPARTMENT,
DEPARTMENT OF OBSTETRICS & GYNECOLOGY,
MEDICAL COLLEGE HOSPITAL, MANJERI,
MALAPPURAM, PIN - 676121.

5 STATION HOUSE OFFICER,
MANJERI POLICE STATION,
MANJERI, MALAPPURAM DISTRICT,
PIN - 676121.

WP(C) NO. 42678 OF 2023

-2-

6 UNION OF INDIA, REPRESENTED BY SECRETARY,
MINISTRY OF WOMEN AND CHILD DEVELOPMENT,
SASTHRI BHAVAN, NEW DELHI, PIN - 110001.

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 22.12.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

'C.R.'

JUDGMENT

The 3rd petitioner - who is stated to be a mere 12 years in age - is carrying a pregnancy, which the petitioners say, was on account of an incestual relationship with her own minor brother.

2. The petitioners seek that the pregnancy of the 3rd petitioner be allowed to be terminated medically, on the ground that, if she is forced to deliver the baby, it would cause cataclysmic consequences to her physiological and psychological condition.

3. Noticing the averments in the pleadings, and advertng to the submissions made on behalf of the petitioners, by their learned counsel - Sri.Firoz K.M., this Court passed an interim order 18.12.2023 - when this writ petition had been listed for admission - to the following

effect:

"The 3rd respondent - Superintendent is directed to constitute a Medical Board to examine the 3rd petitioner, tomorrow (19.02.2023) at 11 a.m. The petitioners will present before the 3rd respondent at 10.30 a.m. tomorrow (19.12.2023) for such purpose.

List on 20.12.2023, for report."

3. The Medical Board, thereupon, made available their opinion, which was produced on record by the learned Government Pleader - Smt.Vidya Kuriakose, along with her Memo dated 20.12.2023.

4. The afore report made the following recommendations:

"As per the history, the 13 year old girl, XX, had carnal intercourse by her brother and is now 34 weeks pregnant. She had not attained Menarche. On examination, height is 145 cm and size of the uterus corresponds to 32-34 weeks pregnancy. USG examination done on 18.12.2023 shows a 34 weeks two days live

pregnancy. Considering the tender age and psychological trauma, the medical board has opined for termination of pregnancy. As far as the foetus is concerned, there is an increase risk of morbidity and mortality as inherent due to pre maturity. The mother is also at risk of complication, both usual and unforeseen, as inherent in the procedure of termination.

After direction from the court, mode of termination may be discussed with the parents and decided."

5. Since the report was not very clear and indubitably contained inputs which are rather amorphous, this Court had an interaction with the members of the said Board on 20.12.2023; and the record of the said interaction was indited in the order of the same day as under:

"The learned Government Pleader has made available a report of the Special Medical Board, constituted at the Government Medical College, Manjeri.

2. *I do not propose to speak on*

the report at this time because, its contents are woefully insufficient for me to take a final decision.

3. *In fact, this Court interacted with the Superintendent - Dr.L.Sheena Lal; HOD Pediatrics - Dr.Asharaf and HOD Gynecology - Dr.Sajala Vimal Raj.*

4. *The doctors were unanimous in their opinion that, since the foetus has attained gestation of over 34 weeks, it would be better to wait until 37 weeks to execute a caesarean section and take the baby out. They added that the health of the mother (victim-child) is also good enough to carry the pregnancy for the said term; and they were affirmative that the prognosis is that a healthy child will be born.*

5. *However, as I have already said above, the report is not sufficient and am certain that the Medical Board should reevaluate the mother and the foetus and give details with respect to their opinion qua the term before which the caesarean section can be executed. This will also be in conjunction with and evaluation of the victim-child's health;*

as also the care and requirements with respect to the baby to be born.

For this purpose, with the consent of both sides, I direct the 3rd petitioner to appear before the Special Medical Board again at 11 A.M on 21.12.2023. The Special Medical Board will make available a detailed report on 22.12.2023.

Post on 22.12.2023 at 1.45 PM."

6. Today, the learned Government Pleader - Smt.Vidya Kuriakose, made available the minutes and decision of the 'Review Medical Board', which was conducted on 21.12.2023, which reads as follows:

"The board constituted on 19.12.2023 had decided for delivery at the earliest as the fetus is reasonably mature. But after review of the clinical status of the girl (P3) as per court directions, the board decided that the continuation of pregnancy for another 1-2 weeks till 36 weeks is unlikely to seriously affect the psychological well being of the mother. It will also help in improving

overall outcome of the baby. So we recommend to continue the pregnancy and deliver by 36 weeks, provided no other obstetric emergency develops before that. We recommend Caesarean Section rather than vaginal delivery because it is having lesser psychological impact for the girl."

7. This Court, thereupon, had a further interaction with the members of the 'Review Board', who were firm in their opinion that, if the child is to be delivered now, it may have serious impact on its health and prognosis, because the gestation is already 34 weeks. The doctors were unanimous in their opinion that, if the gestation is to reach 36 weeks, a safe Caesarean delivery could be considered because, normal delivery may be untenable on account of the young age of the mother. They also informed this Court that, in their opinion, another two weeks of gestation of the foetus would not affect the physiological well-being of the

mother.

8. The learned Government Pleader - Smt.Vidya Kuriakose, vehemently argued that this is not a case where the foetus has any severe abnormality; nor is there any danger to the mother's health or psychological condition, if the pregnancy is to be continued for another two weeks, leading to the delivery of the child. She, however, conceded that the victim - mother, is a very young girl of only about 12 years; and therefore, that it will be up to the petitioners to decide whether they want the assistance of the statutory protection under the Juvenile Justice (Care and Protection of Children) Act, 2015 ('Act', for short), after the delivery is completed.

9. Presumably being aware of the scenario as afore, Sri.Firoz K.M. - learned counsel for the petitioners, submitted that, if there is no

other option, then the 3rd petitioner is willing to carry the foetus for another two weeks, so as to lead to a Cesarean Section delivery. He, however, prayed that, if the doctors are of the view, at that time, that a normal delivery is possible, that option may also be left open to his clients. He then added that, since the victim - mother is such a young girl, she would require the comfort and support of her parents; and therefore, prayed that she be allowed to continue with them, until she delivers the baby and thereafter.

10. A sum total evaluation of all the afore inputs and submissions, renders it indubitable that this is not a case where termination of pregnancy is an option, even if the request of the petitioner is to be considered from any available angle or contour.

11. This is because, the foetus has already

reached 34 weeks of gestation and is now fully developed, preparing for its life outside the womb. Termination of pregnancy at this point is not tenable, if not impossible; and obviously, therefore, the child will have to be allowed to be born, either through a caesarean section, or a normal delivery. This, of course, is a matter of choice for the experts and cannot be fully left to the petitioners, particularly, taking note of the rather young age of the victim - mother.

12. I am also persuaded to the afore because, petitioners 1 and 2 themselves say, through their learned counsel - Sri.Firoz K.M., that they were not aware that their child was carrying a pregnancy until very recently; and that it is only, thereupon, that they decided to approach this Court, seeking the reliefs as prayed for. This factum weighs heavily with this

Court, but I choose not to say anything further for the reason that, perhaps legal proceedings are pending with respect to the alleged relationship the girl had with her brother.

In the afore circumstances, I dispose of this writ petition with the following directions:

(a) The request of the petitioners for medical termination of the pregnancy is hereby rejected.

(b) The petitioners are at liberty to obtain the continuous assistance of the doctors at the Government Medical College, Manjeri; for which purpose, its Superintendent will make all necessary arrangements and provide imperative requirements.

(c) After attaining the gestation period of 36 weeks, the petitioners are at liberty to approach the Superintendent of the Government

Medical College, Manjeri, who will, thereupon, subject her to an evaluation by the experts; and then take a decision as to the nature of the delivery to be performed.

(d) After the baby is born, all protection for him/her will be offered by the doctors and other competent Authorities; and if the petitioners are to invoke the provisions of the 'Act', they will also be given all necessary facilitation for such purposes.

(e) Needless to say, until the 3rd petitioner delivers her child, she will be in the custody and comfort of her parents - petitioners 1 and 2; and if she requires any further assistance, they will be at liberty to approach either this Court, or the Superintendent of the Medical College, appropriately.

(f) In order to ensure that the applicable

provisions of law are not violated, petitioners 1 and 2 are hereby peremptory directed to ensure that the 3rd petitioner's brother - against whom the allegation has been made - is not allowed anywhere near her, or to have access to her in any manner whatsoever. This shall also be ensured by the competent Authorities.

(g) It goes without saying that, during the entire process and thereafter, every Authority - be that of the Medical College, or the official respondents - shall make sure that the anonymity of the petitioners is implicitly maintained.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

WP(C) NO. 42678 OF 2023

-15-

APPENDIX OF WP(C) 42678/2023

PETITIONER EXHIBITS

EXHIBIT P1 (SEALED TRUE COPY OF THE AADHAR CARD OF THE
COVER) 3RD PETITIONER.

EXHIBIT P2 TRUE COPY OF THE ORDER IN W.P. (C).
NO. 23092 OF 2022 DATED 21.7.2022