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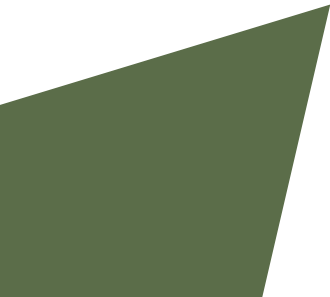
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**CASE COMMENTARY- Ku. Astha Pande v. State of Madhya Pradesh &
Anr.**

(Decided on 26th March 2020)

Anjali Baskar

Madhya Pradesh HC: Pregnancy beyond 20 weeks which does not arise as a result of rape or failure of contraceptives under Medical Termination of Pregnancy Act, 1971 cannot be terminated.

FACTS

In the case of **Ku. Asthha Pande vs. State of Madhya Pradesh & Anr. on 26th March, 2020¹**, the Petitioner has filed Writ Petition No. 6494/2020, seeking direction for termination of her pregnancy by the registered Medical Practitioner. The petitioner then approached the M.Y. Hospital for recourse, but the Medical Practitioner refused to terminate the pregnancy on the grounds that the pregnancy is of 24 weeks, which cannot be permitted under the provisions of **Medical Termination of Pregnancy Act, 1971**. The Principal Registrar recorded her statement in- camera proceedings, which shows the petitioner's wish to get an abortion.

ARGUMENTS OF THE PETITIONER

- The petitioner's counsel (Shri Yashpal Rathore) submitted that because of this unwanted pregnancy, the petitioner is suffering grave injury to her mental health, hence he pleads that despite exceeding the 20 weeks of pregnancy, with the permission of the Court, the pregnancy can be terminated.
- He referred to a Supreme Court judgement, **Suchita Shrivastava and Anr. vs. Chandigarh Administration (2009) 9 SCC 1²**, in which the court held that with the consent of the woman, the pregnancy can be terminated even after 20 weeks.
- He referred to another Supreme Court case, **X & Ors. vs. Union of India & Ors³**, in which the decision stated was that a woman's right to make her own reproductive choices is considered a dimension of "personal liberty" under Article 21 of the Constitution of India, and therefore permitted the termination even though the current pregnancy of the petitioner was over 24 weeks.

¹ Ku. Asthha Pande vs. State of Madhya Pradesh & Anr. on 26th March, 2020.

² Suchita Shrivastava and Anr. vs.. Chandigarh Administration, (2009) 9 SCC 1.

- The petitioner’s lawyer also said that in the case of **Mehmood Nayyar Azam vs. State of Chhattisgarh and Ors.**⁴, the Supreme Court has explained the meaning of terms “torture”, “harassment”, “inhuman torture” and “mental and “psychological torture”, and held that any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution of India.
- He further contended that if the petitioner continuous with the pregnancy and delivers then the child, she will suffer the mental torture throughout her life, as she would not be in a position to give the name of father to the unwanted child, therefore, the petitioner may be allowed by issuing direction to the Medical Practitioner to terminate the pregnancy of the petitioner in order to give respect to her choice.

ARGUMENTS OF THE RESPONDENT

- The State’s Counsel (Shri Vinay Gandhi) submitted that the termination of pregnancy beyond the period of 20 weeks is not allowed under the Act of 1971. The petitioner also did not fulfill any of the conditions provided under sub-clauses (i), (ii) & (b) of Section 3 (2) of the Act. She approached the M.Y. Hospital for termination of pregnancy after crossing the period of 22 weeks.
- She had knowledge of the pregnancy long back but chose to continue with the unwanted pregnancy, consented to the physical relationship with the boy at the age of majority. The petitioner is neither a rape victim nor is the foetus is suffering from any congenital defect which harms the life of the mother. According to expert medical opinion, there is no threat to the petitioner's life if she is permitted to carry full term. The counsel stated that if she is allowed to terminate the pregnancy that would amounts to taking of life of an unborn child, which is detrimental to state interest.
- The respondents’ counsel believed that the petitioner’s counsel conceded when he said that he had not come across any judgment passed by the Supreme or High Court which had similar facts and circumstance that the Court had permitted for termination of the pregnancy. In case of *Suchita Shrivastava*, the facts were different. In that case, the petitioner was a victim of rape and attended the age of majority and was capable to give consent.

³ X & Ors. vs. Union of India & Ors., (2017) 3 SCC 458.

⁴ Mehmood Nayyar Azam vs. State of Chhattisgarh and Others, (2012) 8 SCC 1.

- Adv. Vinay Gandhi proceeded to tear down the validity of case laws brought by the petitioner's side. In the case of *Ms. X & Others*, the girl was 22 years old and the pregnancy was 22 weeks old on the date of the petition and she had a serious medical condition. Obviously, that's why here in this case, pregnancy above 22 weeks was allowed to be aborted, so the facts are dissimilar to the present case.
- The petitioner argued that in the current case however, the girl, who was a major, had an affair with a boyfriend and became pregnant. She approached the M.G.M. Medical College and M.Y. Hospital for termination of her pregnancy with unnecessary delay. She was thoroughly examined by the team of Doctor and they were of the opinion that the pregnancy is 24 weeks, hence, termination is impermissible under the M.T.P. Act.

ANALYSIS

- Under the Indian Penal Code, abortion is a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. The legislature came up with the Medical Termination of Pregnancy Act, 1971 with aim and object to save the mother's health, strength and sometimes life by way of termination of pregnancy.
- The case does not fall under 2 of the conditions for termination of pregnancy: (1) where the pregnancy is caused by rape, the anguish shall be presumed to constitute a grave injury to a mental health and as per explanation (2) where the pregnancy occurs as result of failure of any contraceptive device or methods used by married woman for family planning, the suffering caused may be presumed to constitute a grave injury of a mental health to a pregnant woman.
- The court also held that the legislative intention of M.T.P. Act, 1971 and the decision in case of *Suchita Shrivastava* (supra) prominently places emphasis on personal autonomy of a pregnant woman to terminate the pregnancy in terms of Section 3 of the Act. After the Madhya Pradesh High Court deliberated, they stated that the petitioner is not entitled for termination of pregnancy.
- The court felt that the only reason given by the petitioner for termination is that the boyfriend has broken up the relationship with her. In future, there may be a possibility of re-association between them, but the termination of pregnancy is an irreversible process.

- The petitioner also came up with the plea of breaking of relationship after the expiry of 22-24 weeks, which was too late. If she had approached the Medical Practitioner immediately, they or the Court would have terminated the pregnancy.

COURT'S DECISION

The order was given by Justice Vivek Rusia. After the Madhya Pradesh High Court deliberated, they stated that the petitioner is not entitled for termination of pregnancy.

Therefore, the petition was dismissed and the permission for abortion was not granted as there was no sufficient grounds for the same.

(Disclaimer: The author is pro-choice, but did not reflect their sentiments in reporting this case.)