HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 1344/2019

APPELLANTS:-

1. State Of Rajasthan, through Chief Secretary, Government Of Rajasthan, Secretariat, Jaipur.
2. The Secretary, Department Of Medical And Health, Government Of Rajasthan, Jaipur (Raj.).
3. The District Collector, Churu (Raj.).
4. The Controller Of Principal Of Pandit Deendayal Upadhyay Associate Group Of Hospital And Medical, College, Churu, (Raj.).
5. The Chief Medical And Health Officer, Churu (Raj.).
6. The S.H.O., Police Station Bidasar, District Churu (Raj.).

(Respondents in writ petition)

Versus

RESPONDENTS/WRIT PETITIONERS:-

1. S, (Name Withheld)

(The Petitioner)

2. Navjeevan Sansthan through its Sansthan Prabhari Shri Rajendra Parihar S/o LT. Shri Bhagwan Shri Parihar, Aged About - 64 Years, Sector - 16, Chopasani Housing Board. (Applicant)

Applicant

For Appellant(s) : Mr. Pankaj Sharma, AAG.

For Respondent(s) : Dr. Sachin Acharya for the applicant Organisation in the writ petition.

HON'BLE MR. JUSTICE SANDEEP MEHTA

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

J U D G M E N T

Reserve on ::: **17/01/2020**

Pronounced on ::: **01/05/2020**

Reportable

BY THE COURT : (PER HON'BLE MEHTA, J.)

1. The instant special appeal (writ) has been preferred by the State of Rajasthan & Ors. being aggrieved of the Judgment dated 17.10.2019 passed by the learned Single Bench of this Court in S.B. Civil Writ Petition No.14827/2019.

2. Brief facts relevant and essential for disposal of the instant appeal are noted herein below:

The minor respondent No.1- writ petitioner was sexually assaulted whereby, she unfortunately conceived. The minor moved an application through her mother seeking permission for termination of her pregnancy before the Special Judge, SC/ST Act Cases, Churu who, vide order dated 16.09.2019, directed the Chief Medical Officer, Ratangarh, District Churu to get medical examination of the girl conducted so as to ascertain her physical and mental status and so also that of the foetus. The Court also indicated in its order that an assessment be made as to whether, looking at the physical condition of the minor victim, she was capable of safe child birth or not. A Medical Board was constituted at the Government Hospital, Churu, which examined the applicant on 16.10.2019 and gave its opinion in the following terms:

> "In opinion of Medical Board, she is 25 W 3 D pregnancy (by sonography) with single live fetus, her blood investigations are within normal limits and she does not have any complication of pregnancy. At present her condition seems to be suggestive that there is no serious threat to her life in termination of pregnancy. However, at the time of termination or after termination risk of known medical or surgical complication cannot be denied."

3. The opinion of the Medical Board was put up before the Special Judge who, initially fixed the matter on 25.09.2019 for the purpose of hearing the victim. Realising that the victim was a minor, the learned Special Judge, SC/ST Act Cases transferred the matter to the Court of the Special Judge, POCSO Act Cases, Churu who passed an order dated 27.09.2019 holding that the application was not maintainable because the length of gestation had gone beyond the threshold of 20 weeks prescribed by The Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'The MTP Act'). The Court observed that the relief, if any, could be extended to the applicant by the High Court in its writ jurisdiction. Thereupon, the victim preferred the above referred writ petition before this Court through her widowed mother. The matter was deferred on a couple of dates for seeking confirmation of the victim whether she was determined to get the pregnancy terminated or whether she could contemplate handing over the child to be born to some social organization or shelter home. Additional opinion was sought from the Medical Board, Churu whether the termination of the pregnancy would be conducive to the health of the girl or it could pose any serious threat to her life and body. The Medical Examination Report dated 16.10.2019 issued by the Medial Board comprising of five doctors was presented before the Court on 17.10.2019 wherein, an opinion was expressed that no serious threat to life or body would be posed if the applicant underwent termination of pregnancy which could be recommended by the High Court.

However, the learned Single Bench, rejected the writ petition by the order dated 17.10.2019 turning down the prayer of the

termination of the child's pregnancy holding that the foetus in womb had a right to life as guaranteed under Article 21 of the Constitution of India. The medical termination of pregnancy was denied and the application filed by an organization named '*Navjeevan Sansthan*' to take custody of the child was allowed. The relevant paras of the impugned Judgment are quoted herein below for the sake of ready reference:

> "26. However, the entire scheme of Sec. 3 applies in two stages, one up to 12 weeks, and second from 12 to 20 weeks. In the case at hand, the threshold set by the Legislature has crossed as the pregnancy has crossed the cut-off period of 20 weeks. Sec. 5 takes into consideration the eventuality of 20 weeks threshold being crossed, and further limits the discretion available to permit termination of pregnancy.
>
> 27. What constitutes an agony is subjective and only the Petitioner can feel the real pain of being a victim of an act as abhorrent as Rape. No words can describe her pain, no expressions can meet her anguish. Given the predicament at hand, this Court feels constrained in applying the judgments cited, and is forced to take up a case-specific evaluation. This balancing exercise is necessitated due to the 20 weeks threshold having been crossed, where the mental agony is a relevant factor for permitting termination of pregnancy. Post the 20 weeks threshold, the mental agony remains, may even become more excruciating, but the Court cannot be unmindful of the voice of the 'yet to be born' - a fully alive prospective child in the womb.
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> 28. <u>While doing this balancing exercise, this Court has two very striking factors to reckon – the adoloscent age of 'S' - 17 years; and that the petition has been filed by victim's widow mother. She can naturally see the social stigma and feel the turmoil of her daughter, but cannot possibly perceive the feeling of a mother carrying a baby. On the other hand is standing an NGO, which is more than willing to protect unborn life while assuring the dignified life of the petitioner</u>.
>
> [Emphasis supplied]
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> 29. The Medical Termination of Pregnancy is statutory in nature, with constitutional underpinnings, on the other hand the right to life is flowing directly from Art. 21. The Petitioner who is pregnant is carrying a life, and the "compelling State interest" in preserving life has to be balanced vis-à-vis the right of the Petitioner as a rape victim from suffering unnecessary mental agony. In this analysis, relying on the

judgments cited above, this Court has to be alive to the excruciating mental agony of the Petitioner and it has to also hear the voice of the unheard "foetus in womb";a human being which too is alive, though yet to be born.

30. Taking strength from the constitutional position, where "bodily integrity" is a facet inter alia of the right to life, whereas "being alive" is the right to life; this Court is constrained to hold that the per-se right to life of the prospective child needs to be given precedence over the right of the Petitioner, particularly in the given situation. The Court being mindful of what the Petitioner would go through, and placing reliance on the law enunciated in Z v. State of Bihar, (2018) 11 SCC 572 (para 48-57) proposes to pass following directions for ensuring comfortable pregnancy and delivery, in a setup that must guarantee utmost privacy and respect for the dignity of the Petitioner.

31. Hence, right to life of the foetus is also required to be considered. Right to life guaranteed by the Constitution of India under Article 21 of the Constitution of India, cannot be invoked for the victim alone. Protection of Article 21 is as much available to the child to be born, unless protection of foetus poses an eminent threat to the life of mother.

32. In the facts obtaining in the present case, when the applicant society has volunteered, this Court is not inclined to permit medical termination of the pregnancy, as prayed by the petitioner 'S' and instead deems it appropriate in the interest of the 'yet to be born baby' to allow the application filed by the applicant – Society ' Navjeewan Sansthan'.

33. However, with a view to strike the balance between the right to privacy of the victim 'S' and the right to life of the 'child to be born', this Court deems it appropriate to pass the following directions:-

(i) To maintain the secrecy of her pregnancy, the State will ensure petitioner's admission in Nari Niketan, Jodhpur until her delivery and convalescence.

(ii) State will also permit petitioner's mother to live with her to give moral and emotional support.

(iii) In case 'S' and her mother wish to live in their own residence, they may do so.

(iv) If the petitioner and her mother move to Nari Niketan, Jodhpur, the State will ensure safe delivery of the child at the place where she resides.

(v) In case the petitioner refuses to be admitted to Nari Niketan, Jodhpur, the CMHO, Churu-respondent No.5 and if she comes to Nari Niketan, Jodhpur then CMHO,

Jodhpur will ensure requisite pre-natal and post-natal medical care.

(vi) After the birth of the child, the custody of the child will be handed over to the applicant "Navjeewan Sansthan", as soon as feasible, of course after taking consent of 'S', her mother and a fitness certificate of paediatrician.

(vii) This Court has no doubt that the applicant society will take utmost care of the child to be born.

(viii) For a period of 12 months, the society (Navjeewan Sansthan) will not give such child in adoption or otherwise. The petitioner shall have liberty to take back the custody of the child within the period interregnum, if she chooses so to do, after becoming major.

(ix) Concerned CMHO shall take DNA sample of the child and ensure its handing over to learned AAG so that the same be forwarded to the concerned Court, in case it is required in the trial.

(x) In the entire process, all concerned will ensure that secrecy of the pregnancy, anonymity of the petitioner and the 'child to be born' is maintained.

(xi) It shall equally be the responsibility of the applicant society to ensure that the child does not know about his/her mother, and of course about the order instant."

The State Government has approached this Court against the above Judgment in its capacity as the *parens patriae* in an endeavour to protect the rights of the possible victims claiming that the impugned Judgment impinges upon the fundamental right of victims of rape from seeking termination of a forced pregnancy. Hence, this special appeal.

4. Learned Additional Advocate General Shri Pankaj Sharma representing the State urged that the impugned Judgment is bad in the eyes of law because the same runs contrary to the letter and spirit of the MTP Act. Shri Sharma contended that the concept of comparative agony which the Single Bench evaluated and

decided in favour of the right of the child to be born over and above the agony and Mental Trauma caused to the victim is not the only facet of the matter because as per him, scientific research has established beyond the pale of doubt that child birth at an age below 18 years is not conducive to the mental and physical well-being of the mother. The possibility that the girl giving birth at such a tender age would suffer numerous future complications is imminent. He urged that in a case where conception is a result of sexual assault being committed on a minor girl then, her fundamental right to live as a normal person without undergoing the trauma of giving birth at such a tender age would have to be given precedence over the fictional fundamental right of the child yet to be born. He further contended that possibility of death or grave harm to the mother while undergoing delivery at such tender age is very high and therefore, the comparative analysis of fundamental right to life as assessed by the learned Single Bench in the impugned Judgment is lopsided and thus unsustainable. In support of his contentions, Shri Sharma relied upon the following Supreme Court Judgments:

(i) ***Sarmishtha Chakraborty & Anr. Vs. Union of India & Ors.,*** reported in ***(2018)13 SCC 339***;

(ii) ***Mrs. X And Ors vs Union Of India And Ors ,*** reported in ***(2017)3 SCC 458***; and

(iii) ***Suchita Srivastava & Anr vs Chandigarh Administration,*** reported in ***(2009)9 SCC 1,***

and urged that except in the cases where medical opinion is otherwise, right to seek termination of pregnancy as available to the victim of forced conception has to be honoured and upheld unconditionally irrespective of the length of gestation. Learned

AAG Shri Sharma further contended that the observations made by the learned Single Bench at para 28 of the impugned Judgment that the writ petition had been filed by the victim's widowed mother who could not have possibly perceived the feeling of a mother carrying a child in her womb is self-contradictory and rather humiliating to the widowed mother as it was she who gave birth to the applicant 'S'. On these grounds, Shri Sharma vehemently and fervently urged that the findings recorded by the learned Single Bench in the impugned Judgment run contrary to the Supreme Court decisions in the cases of ***Sarmishtha Chakraborty (supra)*** and ***Suchita Srivastava (supra)*** and are also in contradiction to the MTP Act and thus, the same deserve to be quashed and struck down.

Dr. Acharya, on the other hand, supported the impugned Judgment and urged that by now, the victim must have delivered the child and thus, the issue involved in this appeal has been rendered academic in nature and hence the appeal should be dismissed.

No one has put in appearance on behalf of the respondent victim despite service.

5. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned Judgment.

6. It is true that by now, the victim must have delivered the child and thus, to her extent, the exercise involved in this appeal has been rendered totally futile. However, the State, in its capacity as the *parens patriae* has chosen to challenge the impugned

Judgment lest it creates hurdles in the path of future victims and thus, we deem it fit to examine the matter on merits.

If we peruse the observations made by the learned Single Bench at para No.32 of the impugned Judgment, it becomes clear that discretion of the learned Single Judge, while turning down the prayer for termination of the victim's advanced pregnancy was primarily swayed by two factors, (a) that the foetus in womb had developed significantly and thus, the child to be born had a right to life as per Article 21 of the Constitution of India. Holding this, the balance was tilted in favour of the birth of the child rather than upholding the victim's right to undergo medical termination of pregnancy and (b) that the applicant society had volunteered to take care of the child after its birth and thus, it could be presumed that the child would be brought up with requisite care and attention.

7. Reproductive choice of a woman has been recognised as a fundamental right by a three Judges Bench of Hon'ble the Supreme Court in the case of ***Suchita Srivastava (supra)*** wherein, it was observed as below:

> "**11.** A plain reading of the above-quoted provision makes it clear that Indian law allows for abortion only if the specified conditions are met. When the MTP Act was first enacted in 1971 it was largely modelled on the Abortion Act of 1967 which had been passed in the United Kingdom. The legislative intent was to provide a qualified 'right to abortion' and the termination of pregnancy has never been recognised as a normal recourse for expecting mothers. **There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there**

should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.

However, in the case of pregnant women there is also a 'compelling state interest' in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.

12 . A perusal of the above mentioned provision makes it clear that ordinarily a pregnancy can be terminated only when a medical practitioner is satisfied that a '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' [as per Section 3(2)(i)] or when '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' [as per Section 3(2) (ii)]. While the satisfaction of one medical practitioner is required for terminating a pregnancy within twelve weeks of the gestation period, two medical practitioners must be satisfied about either of these grounds in order to terminate a pregnancy between twelve to twenty weeks of the gestation period. The explanations to this provision have also contemplated the termination of pregnancy when the same is the result of a rape or a failure of birth-control methods since both of these eventualities have been equated with a 'grave injury to the mental health' of a woman. In all such circumstances, the consent of the pregnant woman is an essential requirement for proceeding with the termination of pregnancy. This position has been unambiguously stated in Section 3(4)(b) of the MTP Act, 1971. The exceptions to this rule of consent have been laid down in Section 3(4)(a) of the Act. Section 3(4)(a) lays down that when the pregnant woman is below eighteen years of age or is a 'mentally ill' person, the pregnancy can be terminated if the guardian of the pregnant woman gives consent for the same. The only other exception is found in Section 5(1) of the MTP Act which permits a registered medical practitioner to proceed with a termination of pregnancy when he/she is of an opinion formed in good faith that the same is 'immediately necessary to save the life of the pregnant woman'. Clearly, none of these exceptions are applicable to the present case.”

The learned Single Judge was persuaded by the fact that bodily integrity of the rape victim was only a 'facet' inter-alia of the right to life whereas, being alive was the substantial right to life of the foetus which deserved to be given precedence over the reproductive choice of the victim in the given situation.

We are of the opinion that while making the above evaluation, the learned Single Judge did not take into account the correct perspective, the fact that the woman's right to make a reproductive choice has been recognized as a dimension of personality liberty by Hon'ble the Supreme Court in the case of ***Suchita Srivastava (supra)***. The reproductive choice has been held as covering procreation as well as abstention therefrom. Indisputably, a woman's right to privacy, dignity and bodily integrity is a fundamental right guaranteed by Article 21 of the Constitution of India. When the prospective child has been conceived as a result of rape, the eventuality has been held as causing grave injury to the mental health of a woman in the case of ***Suchita Srivastava (supra)*** and Explanation-1 to Section 3 of the MTP Act. While directing that the rape victim shall deliver the child, the learned Single Bench failed to consider the fact that the personal liberty of the woman was being impinged upon on two counts i.e. on her right to make a reproductive choice as well as posing a grave injury to her mental health and causing her Mental Trauma. In the comparative evaluation, the infringement of the fundamental right to life of the victim heavily outweighs the right to life of the child in womb. Therefore, we may reiterate that the fundamental right of the pregnant woman i.e. the child writ

petitioner to get the pregnancy terminated would heavily outweigh the right of the foetus to be born.

8. We are of the view that while assessing the matter, apt consideration was not given to the requirements of the MTP Act; fundamental right of the victim with forced pregnancy and the consequences which she would have to suffer after the birth. The discretion exercised by the learned Single Bench has led to an irretrievable situation whereby, the child, yet to be born, was brought within the category of child in need of care and protection as defined under the Juvenile Justice Act and the victim has been made to face the consequences and social stigma of giving birth as an unwed mother.

9. Indisputably, in the case at hand, the victim conceived because of the offence of sexual assault committed upon her and thus, the pregnancy was a forced one rather than it being of her choice. We firmly feel that as the victim has been virtually forced to give birth to the child against her desire, she will carry a stigma for the remainder of her life that the offspring born as a result of the ghastly offence of rape committed upon her, is alive somewhere in this world. It may also be possible that having been directed to give up the child to the NGO, the victim girl might carry a constant feeling of remorse in her mind regarding the fate of her child. Thus, given the situation where the victim chose to approach the Court through her guardian as per the MTP Act seeking termination of her undesired pregnancy albeit with some delay, her request should have been acceded to over and above the right to life of the child yet to be born. Furthermore, we are

also of the opinion that the physical and mental trauma which the victim would have to suffer as a result of unwanted delivery, would significantly add to her woes and misery. Section 3 of The Medical Termination of Pregnancy Act reads as below:

> **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 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 pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of 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 lunatic, shall be terminated except with the consent in writing of her guardian.
>
> (b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.

Explanation (1) clearly stipulates that where pregnancy is caused by rape, the anguish caused by such pregnancy would be deemed to constitute a grave injury to the mental health of the pregnant woman. In the present case, the situation is graver because the pregnant woman was a victim of child rape and thus, by not acceding to her request for termination of pregnancy, her fundamental right to avoid the after effects of the pregnancy has been permanently extinguished.

Medical opinion is well settled that giving birth at an early age causes great risks to the future well being of the mother. A serious debate is going on to increase the valid age for marriage of a girl from 18 years to 21 years. A bill has already been tabled in the Parliament to increase the permissible limit for Medical Termination of Pregnancy to 24 weeks in certain situations. Medical opinion is trite that the possibility of the child being under-nourished is eminent if the mother is of a tender age. The medical opinion on teenage pregnancies and abortion was discussed in detail by the Madras High Court in the case of ***V. Krishnan vs. G. Ranjan***, reported in ***1994 WritLR 91*** and it was observed as below:

> "**13**. According to learned counsel for the petitioner, Medical Experts are advising against teenage pregnancies in view of the complications which may be caused thereby. He places reliance on the following passages found in "Current Reviews in Obstetrics & Gynaecology -- J.K. Russell -- Early Teenage Pregnancy -- Churchill Livingstone :

"In western advanced societies few mothers now die in childbirth and because of the sparsity of deaths it is difficult to assess the specific risk for selected groups of mothers. In England and Wales since 1952 confidential enquiries have been made on all maternal deaths and the results have been published at 3-early intervals in a series of report (Report on Confidential Enquiries) into Maternal Deaths in England and Wales, 1952-1975). In these reports there is some acknowledgment of the risk to the lives of very young mothers though the number of maternal deaths in the youngest age group is understandably small. But it is accepted by the Regional Assessors for Maternal Deaths in England and Wales that the available evidence points to a higher than average risk of mortality in mothers aged 15 and younger." (Page 24).

... ...

"Indeed the optimal age for reproduction would certainly include girls aged 17-19 and the risk of morbidity or mortality in this group is very slight indeed." (Page 25) ... ...

"In summary the evidence points to an increased risk of mortality especially among less educated, poorly motivated youngsters and those aged 16 and under." (Page 26).

... ...

"**Again people tend to associate teenage pregnancy with poor standards of childbearing high infant death rates and subsequent uncontrolled high fertility. In summary most advanced societies regard teenage pregnancy as being socially as well as medically unacceptable**." (Page 71).

14. Teenage pregnancies are generally discouraged in view of the fact that in many a girl the cervix could not have grown fully and properly and deliveries may have to be caused by caesarean operations. But, even to-day, normal deliveries are recorded in the case of several teenage girls. As per the Medical History, the youngest mother in the world delivered a child in Lema, Peru, in May 1939 and her age at that time was 5 years 8 months. But, once a pregnancy has come into existence, the question is whether the same should be terminated because the pregnant girl is in her teens. N. Jeffcoate in "Principles of Gynaecology", 5th Edition, says that "Termination of pregnancy, therapeutic or legal, is always potentially dangerous". (Page 630). The learned author has listed out the dangers and complications which follow the termination of pregnancies on women who are generally fit physically, such as mortality and morbidity. At page 623 in the same book it is said:-

> "The World Medical Association laid down some principles in the Declaration of Geneva and stated that abortion should only be performed as a therapeutic measure and that doctors should be advised always to act on the principle "I will maintain the utmost respect for human life from the time of conception."

10. Hon'ble the Supreme Court in the cases of ***Mrs. X And Ors vs Union Of India And Ors (supra)*** and ***Meera Santosh Pal & Ors. vs. Union of India & Ors.*** reported in ***AIR 2017 SC 461***, has permitted termination of pregnancy of a foetus with abnormalities where duration of pregnancy was upto 24 weeks.

11. Having considered the entire factual and legal matrix involved in this case, we are of the prima facie opinion that the impugned Judgment impinges upon the statutory right of seeking medical termination of pregnancy provided to victims of rape by The Medical Termination of Pregnancy Act.

12. There is yet another dimension to the controversy. As is apparent, the mother clearly expressed her inability to keep the child with herself. The respondent NGO has come forward with an open-armed response assuming that it will take care of the child and act in its best interest. Nonetheless, we cannot loose sight of the fact that the victim mother will always carry the grief of not being able to bring up and shower her love and affect upon the child born to her and of not knowing about its future well-being. The stigma that she was forced to give birth without marriage would also haunt her for eternity causing her immense mental trauma and put an indelible mark on her mindset. Looking to the

conservative framework of our society, her matrimonial chances are also likely to be severely compromised in such a situation.

13. A pregnant women, even in a normal situation, has a right to demand termination of pregnancy upto 20 weeks as recognised by the Medical Termination of Pregnancy Act. Thus, evaluated on the touchstone of the observations made by Hon'ble the Supreme Court in the case of ***Suchita Srivastava (supra)***, we are of the considered opinion that the right of a child rape victim to make the reproductive choice of terminating the foetus heavily outweighs the right of the child in womb to be born even where the pregnancy is at an advanced stage. Had the question only been of the right of the child in womb to be born then, the same analogy would equally apply to a foetus with known abnormalities because such abnormalities would by themselves, not give anyone the right to extinguish the life of a foetus.

14. In wake of the discussion made herein above, we are of the firm opinion that the impugned judgment dated 17.10.2019 passed by the learned Single Bench does not lay down the correct proposition of law. We are conscious of the piquant situation that the victim's right to seek medical termination of pregnancy been irretrievably frustrated because of the delays which occurred at the initial stages. Apparently, the victim sought termination of her pregnancy well in time but the matter was unnecessarily delayed because of red-tapism and systemic indifference.

15. We are also persuaded by the contention of learned AAG Shri Pankaj Sharma that the observations made by the learned Single Judge at para No.28 of the impugned Judgment were totally uncalled for. The learned Single Judge observed in the said para

that the victim's widowed mother who filed the writ petition on her behalf could not possibly perceive the feeling of a mother carrying a baby. The observation so made is absolutely off the mark and is rather stigmatic to the victim's mother. Needless to say that it is the mother who gave birth to the victim and thus, to say that she could not have perceived the feeling of a mother carrying a baby was absolutely unwarranted. The said observation is also against the letter and spirit of Section 3(iv) of the MTP Act as per which, the consent of the guardian of a woman below 18 years for termination of pregnancy is considered sufficient for the purpose.

16. As an upshot, the impugned judgment dated 17.10.2019 passed by the learned Single Bench is set aside except to the extent of the directions given for welfare of the child.

However, before parting, we would like to give extensive directions enumerated below to ensure so that the unfortunate situation which was posed before this Court does not recur:

(i) that the State Government shall frame suitable guidelines to ensure that the victims of rape who became pregnant by sexual assault are provided timely and legal as well as medical assistance so as to ensure that they can exercise their reproductive choice in terms of the MTP Act;

(ii) that no sooner, the factum of a victim of sexual assault having become pregnant is reported, the Medical Officer/ SHO of the police station concerned, shall forthwith forward a report thereof to the Full Time Secretary, District Legal Service Authority concerned who, in turn shall, approach the victim with a female counsellor and sensitise her and her guardians about the remedies under the MTP Act;

(iii) in case, an application for termination of pregnancy is submitted by the guardian of the victim to the appropriate authority within the stipulated period of 20 weeks as provided by the MTP Act, the same shall be processed forthwith and suitable decision shall be taken thereupon within three days from the date of submission thereof;

(iv) in case, the application seeking termination of pregnancy is filed before a competent court then, such court shall forthwith summon the victim's guardian and record his/her consent which shall deemed to be final. There shall be no requirement of intervention by police in the matter of consent seeking for termination of pregnancy;

(v) in case, where the threshold of 20 weeks gestation has been crossed, the Full Time Secretary, District Legal Services Authority shall assist the victim and her guardians if they so desire for approaching the High Court to file a writ petition seeking direction for termination of pregnancy in light of decisions of Hon'ble the Supreme Court and of this Court.

(vi) the identity of the victim shall not be disclosed at any stage during this process.

We further direct that the child born to the respondent victim shall be provided all remedial measures as per the Juvenile Justice (Care and Protection of Children) Act, 2015 by the respondent NGO as well as the State Government. The District Collector, Jodhpur shall ensure that the child is brought up with strict adherence to the salutary process of the Juvenile Justice Act, 2015. In case, the child is not adopted, upon attaining the suitable

age, he/she shall be got admitted into a good school as per the Right of Children to Free and Compulsory Education Act, 2009.

17. The appeal is allowed in these terms.

18. No order as to cost.

(PUSHPENDRA SINGH BHATI),J **(SANDEEP MEHTA),J**

40-tikam daiya/-