

**KAVITA AND ANOTHER
V/S
POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND
RESEARCH, THROUGH ITS DIRECTOR & ORS.**

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In virtual Court
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Present : Mr. Kshitij Sharma, Advocate for the petitioners.

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Notice of motion.

Mr. Amit Jhanji, Advocate, accepts notice on behalf of respondents.

The petitioner No.1 is directed to appear before the Medical Board of PGIMER, Chandigarh for medical assessment of health of the petitioner as well as that of the fetus.

The PGIMER, Chandigarh is directed to furnish the report regarding health and medical status of the fetus; vis-à-vis the risk to the life of petitioner No.1, as well as, qua the prospects of healthy life being led by the still born child; if he/she is to take birth.

Repeatedly the petitions are being filed in this court seeking directions for termination of pregnancy; despite the fact that the medical opinion in such cases have already highlighted the risk to the life of the would-be-mother/woman, as well as, a risk of death and/or extreme hardship to the still born child, in case he/she comes in this world, on account of development of deformities and incurable disease. Repeatedly, this court has been issuing directions for termination of pregnancy; in individual cases. The reasons given by the medical professionals for not terminating the pregnancy on their own; even in these extreme cases; have been that the

Medical Termination and Pregnancy Act, 1971 (in short, the Act) prohibits the termination of pregnancy after a period of 20 weeks. Viewed in this situation, just to care for human life even this Court has been passing orders for termination of pregnancy by going out-of-way and in disregard of the provisions of the Act, while issuing directions for termination of pregnancy after a period of 20 weeks. As a result, some educated and well-off couples might have been successful in saving the life of the would-be-mothers/women. However, there would be thousands of couples who are either not able to avail the legal assistance and legal remedies by approaching this court in time or who might be living in abject poverty and therefore, are not able to avail the legal remedy at all. In such situation, the would-be-mothers/women would not have any choice except to lose their own lives in some cases or to give birth to totally lunatic or destitute or incapacitated children, despite the fact that there had been a competent advise from the medical professional for termination of those pregnancies. Although Section 5 of the Act provides for some relaxation in mandatory prohibitive period of 20 weeks, however, that is only in case when such termination of pregnancy is immediately necessary to save the life of woman. Even this provision is ignoring situation qua fetus with extreme deformity or disease, which may render the life of such child to be a hell, if he/she is actually born.

The perusal of the judgments, referred to by the counsel for the petitioners, shows that either the issue of legality of the provisions has not been adverted to in the judgments; at all; or the judgments have held the continuation of such a pregnancy; against the medical advice; as violative of fundamental rights of the would-be-mother/woman. If the provision

happens to be in violation of the fundamental rights of the would-be-mother/woman, then such a provision cannot exist on the statute book.

There is another aspect to which the provision seems to be totally oblivious. The Act restricts the termination of pregnancy only upto 20 weeks. However, no remedy, whatsoever is provided for, in the Act, if any deformity/disease or any terminal problem happens to the fetus after the prescribed period of 20 weeks. Needless to say; that so far the science and technology has not been so advance as to prevent the development of any complication/disease or deformity in the fetus after a period of 20 weeks. In such a situation, if such a disease, deformity or complication develops after 20 weeks, then if this provision remains on the statute book, the would-be-mother/woman is bound to lose her life, along with the life of the fetus/still born child, unless she happens to be already on operation table of the Medical practitioner to take advantage of relaxation provided by Section 5 of the Act.

In view of the above legal and factual gamut, prima facie, it would be appropriate to consider the vires of the provisions of this Act. However, before this Court enters into consideration of the vires of the Act, it would be appropriate to seek assistance from the Union of India, State of Punjab, State of Haryana and Union Territory Chandigarh in that regard.

Let notice be also issued to standing counsels for the Union of India, State of Punjab, State of Haryana and Union Territory Chandigarh, for 10.08.2020.

6th AUGUST, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE