

ITEM NO.55

COURT NO.2

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 14327/2017

(Arising out of impugned final judgment and order dated 26/04/2017
in CWJC No. 5286/2017 passed by the High Court of Patna)

INDU DEVI

Petitioner(s)

VERSUS

THE STATE OF BIHAR & ORS.

Respondent(s)

(with appln. (s) for exemption from filing O.T.)

Date : 09/05/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Ms. Vrinda Grover, Adv.
Mr. Archit R., Adv.
Mr. T. Mahipal, AOR
Ms. Amita Joseph, Adv.
Ms. Ratna A., Adv.

For Respondent(s) Mr. Tushar Mehta, ASG
Mr. Ajit Sinha, Adv.
Ms. Swarupama Chaturvedi, Adv.
Mr. Vibhu Shankar Mishra, Adv.
Mr. G.S. Makker, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This Court on 3.5.2017, after hearing the learned counsel for
the parties, had passed the following order :-

"The present case expositis a situation of its own
kind. The petitioner, a woman, aged about
thirty-five years, invoked the jurisdiction of
the High Court of Patna in Civil Writ
Jurisdiction Case No.5286 of 2017, seeking

termination of the pregnancy on the ground that after being sexually assaulted, she was given rehabilitation in the Women Rehabilitation Centre, namely, 'Shanti Kutir', Mahila Punarwas Kendra, Patliputra, Patna, Bihar, where her pregnancy was discovered. It has also been found that she is HIV Positive. She expressed her desire to terminate the pregnancy on 4th March, 2017. Thereafter, she was examined by the Patna Medical College and Hospital. As nothing fruitful happened in the said College, the petitioner was compelled to knock at the doors of the High Court under Article 226 of the Constitution of India.

The High Court directed the petitioner to be examined by a Medical Board at Indira Gandhi Institute of Medical Sciences, Patna. The Board submitted a report that a major surgical procedure was required. The High Court took up the matter for hearing and, after referring to certain decisions of this Court, came to hold that the Medical Board report has stated that it would be unsafe to the life of the petitioner and further there is compelling State's responsibility to keep the child alive. We do not intend to get into those analysis of the High Court at present.

When the matter was taken up today, we requested Mr. P.S. Narasimha and Mr. Tushar Mehta, learned Additional Solicitor General as to whether arrangements can be made for the petitioner to come to Delhi to be examined by a Medical Board at All India Institute of Medical Sciences (AIIMS), New Delhi. Be it noted, Ms. Vrinda Grover, learned counsel along with Mr. T. Mahipal, learned counsel appearing for the petitioner, after obtaining instructions from the petitioner, has submitted that she is inclined to be examined by a Medical Board at AIIMS, New Delhi.

Mr. P.S. Narasimha and Mr. Tushar Mehta have submitted that a member from the Non Governmental Organization, namely, Koshish-TISS, the respondent No.5 herein, should accompany the petitioner to Delhi. As far as the travel is concerned, Mr. Narasimha and Mr. Mehta spoke in unequivocal voice that the arrangements shall be made for the petitioner and the accompanying member so that they can come to Delhi where further arrangements shall be made for their stay

and the petitioner can be examined by the Medical Board at AIIMS latest by 6th May, 2017.

The report of the Medical Board shall be produced before this Court and we would also request Mr. Narasimha and Mr. Mehta to assist the Court on the issue and also to have some discussion with the doctors, for we are concerned with saving a life of a destitute woman. As we are inclined to think that a woman, who has already become a destitute being sexually assaulted and suffering from a serious medical ailment, not to go through further sufferings. The quintessential purpose of life, be it a man or a woman, is the dignity of life and all efforts are to be made to sustain it.

In pursuance of our order, the Medical Board at All India Institute of Medical Sciences (AIIMS) has examined the petitioner. The opinion of the Medical Board fundamentally is that at present the procedure involved in termination of the pregnancy is risky to the life of the petitioner and the fetus in the womb. the Medical Board has also suggested that she is advised to continue HAART therapy and routine antenatal care, to reduce the risk of HIV transmission to the fetus/baby to the minimum.

In view of the aforesaid opinion, it is the accepted position at the Bar that there cannot be termination of pregnancy. Learned counsel for the petitioner would submit that the petitioner along with the companion be sent back to Patna and for the said purpose appropriate arrangements be made by the Union of India to which Mr. Tushar Mehta, learned Additional Solicitor General concedes. We appreciate the stand taken by the Union of India in this regard.

Learned counsel for the petitioner submitted that the doctors at AIIMS may give the appropriate treatment graph for the petitioner so that she can survive the health hazard that she is in. Mr. Tushar Mehta, learned Additional Solicitor General submitted that she will be given the treatment graph by 10.05.2017.

The controversy does not end here. Learned counsel for the

petitioner would submit that because of the delay caused, she is compelled to undergo the existing miserable situation and, therefore, she is entitled to get compensation and that apart, she is also entitled to get compensation under the Victim Compensation Scheme as framed under Section 357-A of the Code of Criminal Procedure by the State of Bihar.

Apart from the above submission, we are obligated to direct the State of Bihar to provide all the medical facilities to the petitioner as per the treatment graph given by the doctors who are going to examine the petitioner at AIIMS through the Indira Gandhi Institute of Medical Sciences at Patna. The Indira Gandhi Institute of Medical Sciences shall work in coordination with AIIMS, New Delhi so that the health condition of the petitioner is not further jeopardized.

Learned counsel for the petitioner is granted liberty to file an additional affidavit with regard to the facet of compensation within six weeks hence. The State of Bihar, who is represented by Ms. Abha R. Sharma, learned counsel shall file a reply to the special leave petition as well as to the additional affidavit within four weeks therefrom.

We have stated about the grant of compensation hereinbefore. The one facet of granting compensation pertains to negligence and delay which come within the domain of public law remedy. The other aspect of the compensation comes under the scheme dated 24.3.2014 framed under Section 357-A of the Code of Criminal Procedure. Needless to say, the petitioner is eligible to get the compensation under the said Scheme and, therefore, the petitioner shall be paid a sum of Rs.3,00,000/- (Rupees three lac only) by the State of Bihar as she has been a victim of rape. Needless to say, we have determined the compensation regard being had to clause 4 of the Scheme. The said amount shall be paid to her within four weeks hence and compliance report thereof shall be filed before the Registry of this Court. As far as the other aspect of compensation

is concerned, the said aspect shall be considered on 9.8.2017.

As an interim measure, it is directed that there shall be stay of the operation of the judgment and order passed by the High Court of Judicature at Patna in Civil Writ Jurisdiction Case No.5286 of 2017 so that it is not placed reliance upon by any Court.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master