

2026 SCC OnLine Del 58

In the High Court of Delhi at New Delhi
(BEFORE NEENA BANSAL KRISHNA, J.)

Sanya Bhasin ... Petitioner;

Versus

State (NCT of Delhi) Through SHO P.S. Paharganj
and Another ... Respondents.

CrI.M.C. 7984/2025^S

Decided on January 6, 2026, [Reserved on : 12th November, 2025]
Advocates who appeared in this case:

Mr. Atul Jain, Advocate.

Mr. Shoaib Haider, APP for the State.

Ms. Shefali Menezes, Advocate for R-2.

The Judgment of the Court was delivered by

NEENA BANSAL KRISHNA, J.:— Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) (corresponding to Section 482 of the Criminal Procedure Code, 1973 (*hereinafter referred to as 'Cr.PC'*)), has been filed on behalf of the Petitioner, Ms. Sanya Bhasin for challenging the Order dated 13.08.2025 whereby the learned ASJ-04, Delhi, has upheld the Order dated 18.04.2024 of the learned Metropolitan Magistrate (Mahila Court), Delhi summoning the Petitioner for the offence punishable under Section 312 of the Penal Code, 1860 (*hereinafter referred to as 'IPC'*).

2. *Briefly stated*, Criminal Complaint under Section 200 Cr. P.C. was filed for the offences under Section 182/192/195/196/312/379/384/406/420/500/506/34/120B of IPC by *Mr. Himanshu Sarpal*, the Complainant/Respondent No. 2 who is the husband of the Petitioner.

3. The Complainant/Respondent No. 2 stated in his Complaint that he met the Petitioner, Ms. Sanya Bhasin (Accused No. 1) on Shaadi. Com in around May, 2021 and they got married on 19.04.2022, according to the Hindu Customs and Rites at Moti Nagar, New Delhi.

4. The Complainant asserted that the accused persons with the dishonest intention of cheating the Complainant, emotionally blackmailed him and his family, on the pretext that the mother of Ms. Sanya Bhasin had died and there were no one in the family to manage the wedding and the engagement functions. He was put under unwarranted pressure by the accused persons not only to organise the

wedding rituals and the engagement function on 17.04.2022, but was also made to pay the entire amount for the engagement function. Accused No. 3, Puneet Bhasin, father-in-law of the Complainant, forced the Complainant to organise the engagement on 17.04.2022 instead of 16.04.2022, which cost him around Rs. 1,00,000/- more. Even the cost of wedding jewellery and other items of Ms. Sanya Bhasin, were paid by the Complainant and his sister. It was claimed by him that he was emotionally manipulated by the Complainant, to spend huge amount of money in the wedding.

5. It was further asserted in the Complaint that after the marriage, the Petitioner started residing with the Complainant/husband and his parents, in his rented accommodation at Paharganj, New Delhi.

6. It was asserted that the Complainant/husband was shocked when Ms. Sanya Bhasin, in connivance with her brother Shivam Bhasin, Accused No. 2, on 25.04.2022, made a demand of Rs. 1,50,000/- on the pretext of opening a new Office along with her brother/Accused No. 2. He tried to explain, but despite his protest, he was compelled to provide the money from his personal savings and was also forced not to disclose this fact to anyone. False assurance was given that the money would be returned, but it has not been done so till date.

7. The Complainant further explained the instances in detail, to claim that there was strained relationship between him and the Accused persons on account of their greed. In support thereof, he relied upon the Chats with the Petitioner from 02.07.2022 to 01.09.2022. He also filed the photographs of them together.

8. It was claimed that Accused No. 1, Ms. Sanya Bhasin failed to perform her matrimonial duties, she even tried to compel the Complainant to live separately from his parents, and also complained about the place of residence. She even insisted that they changed the accommodation or buy a house. She compelled him to buy a car for her. The discontentment with the matrimonial life, became more and more as the Petitioner's conduct became vindictive and she planned to cause harm to the Complainant, which was extremely disheartening. She induced the Complainant to part with money on various occasions. She also threatened to divorce the Complainant under the fear of which, he gave in to her demands.

9. It is further asserted that the wife earned more than Rs. 1,37,500/- from her job and some undisclosed earnings from her business, which she intentionally concealed by asserting that the money was being handled by her brother and father.

10. On 26.08.2022, the Complainant discovered that she had conceived a child. She eventually went to her parental house on 07.10.2022 claiming that she was unwell, but refused to return unless

floor was purchased by the Complainant. She underwent medical termination of pregnancy of 14 weeks' foetus under medical supervision, on 09.10.2022.

11. On account of the differences and dispute, Complainant filed Complaint for registration of FIR No. 338/2023 under Section 498A/406/323/24 IPC along with an Application under Section 156 (3) CrPC.

12. The Complainant in support of his case, examined himself as CW -1 in pre-summoning evidence. He reiterated allegations made in the Complaint and exhibited all the requisite documents.

13. The learned MM after perusal of the allegations made in the Complaint and the testimony of CW-1, held that there was sufficient material on record to summon the Petitioner, Ms. Sanya Bhasin, Accused No. 2, Shivam Bhasin and Accused No. 3, Puneet Bhasin for the offences under Section 120B/312/406/420/384/506/34 IPC. Accused No. 4, namely, Mr. Pawan Sahni, however, was not summoned as there was no sufficient material against him.

14. The impugned Summoning Order was challenged by the three Accused *vide Revision Petition under Section 397 CrPC* before the learned ASJ, who in his detailed Order dated 13.08.2025 considered the entire evidence and upheld the Summoning of Accused No. 1, Ms. Sanya Bhasin (Petitioner) for the offence under Section 312 IPC only and discharged her for all other offences. Additionally, it was held that there was no cogent evidence against the Accused Nos. 2 and 3 i.e. Shivam Bhasin and Puneet Bhasin, respectively, and the Summoning Order against them, was set aside.

15. The Impugned Summoning Order has been challenged by the Petitioner, Ms. Sanya Bhasin on the *grounds* that the learned Revisional Court has overlooked that the essential ingredients for the offence under Section 312 IPC, which were entirely absent in the Complaint. The provisions of Medical Termination of Pregnancy Act, 1971, have been completely overlooked. The Petitioner had voluntarily undergone the procedure in a registered hospital under qualified medical supervision, which is in accordance with the Act. The termination was done within the statutory gestational limit of less than 20 weeks, under medical advice. No offence under Section 312 IPC, therefore, arises.

16. The *reproductive autonomy* guaranteed under Article 21 of the Constitution of India, has been erroneously criminalised and her lawful exercise of fundamental right to privacy, bodily integrity and decisional liberty, has been overlooked. It has been disregarded that there was absence of *mens rea* or criminal intention on the part of the Petitioner, who did not act with an intention to destroy life or commit a criminal act; she was in distress due to mental cruelty and inhuman treatment

to which she was subjected at the matrimonial home. She was not in a position to safely bring up the child in such an abusive and unstable environment. "*Good faith*" is an express Exception under Section 312 IPC. The Courts while interpreting "*saving the life of the woman*" held that it refers not merely to physical survival, but also preservation of her overall health well-being, as has been held in the Case of *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570.

17. Reliance has also placed on *X v. Principal Secretary, Health and Family Welfare*, (2023) 14 SCC 615 wherein it was held that the woman's *decisional autonomy with respect to her reproductive rights*, forms an intrinsic part of the Article 21 of the Constitution, needs to be protected.

18. Reliance is also placed on *High Court in its own motion v. State of Maharashtra*, 2016 SCC OnLine Bom 8426; *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 wherein it was held that the Magistrate must carefully scrutinise the evidence brought on record and may even put questions himself to the Petitioner and the witnesses, to elicit the answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

19. Reliance is also placed on *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 wherein it was held that the criminal proceedings which amount to abuse of process of law or are manifestly *mala fide* filed with ulterior motives, may be quashed.

20. *A prayer is, therefore, made that the Summoning Order dated 13.08.2025 whereby the Petitioner, Ms. Sanya Bhasin has been summoned for the offence under Section 312 IPC, may be set-aside.*
 Submissions heard and the record perused.

21. By the Impugned Order, the summoning of the Petitioner under Section 312 IPC by the MM, has been upheld by the Revisional Court. The allegations against the Petitioner are that she was pregnant and got the 14 weeks' foetus aborted in contravention of Law.

22. It is not in dispute and has been admitted by the Petitioner herself that she had got the child terminated. There is also a mention about the said act in the Complaint filed before the CAW Cell dated 05.11.2022, wherein she herself stated that she got the pregnancy terminated on account of stress given to her by the in-laws. The Complainant had also filed medical documents as Annexure C-18 in the Complaint.

23. In Medical OPD Card of the Petitioner dated 16.08.2022, it has been recorded that UPT Test conducted by the Petitioner, was found positive and Period of Gestation (POG) was stated to be seven weeks.

Various medicines were recommended to be taken by the Petitioner.

24. Further, the OPD Card of Life Care Centre, Gagan Vihar, Delhi dated 09.10.2023 recorded as under:

"14 weeks pregnancy wants Termination of Pregnancy as there Marital discord & wish to seek divorce in future.

According to Supreme Court Ruling in Sep 2022, it cannot be denied."

[Emphasis Supplied]

25. It is evident that Petitioner was 14 weeks pregnant and wanted termination of pregnancy on account of marital discord and she intended to seek divorce in future. It was further endorsed on the OPD card that according the Supreme Court Ruling in September, 2022, it cannot be denied and up to 20 weeks, one Doctor has to give signatures. Consequentially, termination of pregnancy was done following the medical protocol.

26. This case raises a seminal question of *whether a woman can make a choice to continue with the pregnancy or terminate it within the specified period, as provided in Section 3 of the MTP Act and if yes, under what circumstances.*

27. Abortion is always a difficult and careful decision for a woman who alone should be the choice maker. World Health Organization has defined reproductive rights as those rights which are based on the recognition of the basic right of all individuals and couples *particularly the women to decide freely and responsibly the number, spacing and timing of their children to have information and means to do so and includes the right to attain the highest standard of sexual and reproductive health.*

28. The *first aspect* which needs to be addressed is the right of a woman to get the pregnancy terminated and the right of a foetus to be born.

29. The *moral dilemma* in regard to abortion or the right of the unborn child, needs to be dispelled by referring to *International Human Rights Law*, which states that a person is vested with human rights only at birth; *an unborn foetus is not an entity with human rights. Child is born when he takes the first breath and becomes a human entity. The unborn foetus cannot be put on a higher pedestal than the right of a living woman.* This argument based on morality, therefore, cannot be put on a pedestal and may not be given over-emphasized importance, when considering the rights of a pregnant woman, who alone suffers the pain of pregnancy.

30. Control over reproduction is a basic need and a basic right of all women. The right to make a choice rests in the control of a woman she exercises over her own body and reproductive choice. In *Common*

Cause v. Union of India, (2018) 5 SCC 1, the Apex Court observed that the right to privacy protects *decisional autonomy* when matters related to bodily integrity.

31. The women's reproductive rights may include the right to legal and safe abortion, the right to birth control, freedom from coerced sterilization and contraception, the right to access good quality reproductive health care and informed reproductive choice.

32. In the case of *Suchita Srivastava v. State*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570, the Supreme Court explained the dimensions of personal liberty guaranteed under Article 21 and *explicitly recognised the concept of reproductive autonomy*. It observed as under:

22. 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."

[Emphasis Supplied]

33. This aforesaid case was referred by the Apex Court in the case of *X v. Principal Secretary, Health and Family Department, Govt. of NCT of Delhi*, (2023) 9 SCC 433 wherein the right to abortion was viewed in the context of right to dignity, and the right of women to make reproductive choices, as a dimension of personal liberty under Article 21 of the Constitution was reiterated. *It also recognized that right to reproductive choice also includes the right not to procreate*. It was observed that in the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decision including a decision to terminate the pregnancy, without undue interference from the State. Deprivation of access to

reproductive healthcare or emotional and physical well-being also injures the dignity of women.

34. The pregnancy has profound effects on the health, mental well-being and life of a woman, as observed by the High Court of Bombay in the case of *High Court on its Own Motion v. State of Maharashtra* (supra). Thus, the decision in regard to the pregnancy, must be of the woman alone. The right to control their own body and fertility and motherhood choices, should be left to the women alone. The *right to autonomy* and to decide what to do with their own bodies, including whether or not to get pregnant and stay pregnant, was recognized as a basic right of a woman.

35. This freedom of choice of a woman is recognized as a facet of the personal autonomy of a woman in the case of *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 wherein it was observed that the "*woman's freedom of choice, whether to bear a child or abort her pregnancy, are areas which fall in the realm of privacy*". The relevant observations are as under:

"297. What, then, does privacy postulate? Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt. Recognising a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself. Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others..."

[Emphasis Supplied]

36. In *X v. Principal Secretary, Health and Family Department, Govt.*

of *NCT of Delhi*, (2023) 9 SCC 433, the Apex Court discussed the right to reproductive autonomy and the right to bodily autonomy in the following terms:

"103. ...Societal factors often find reinforcement by way of legal barriers restricting a woman's right to access abortion. The decision to have or not to have an abortion is borne out of complicated life circumstances, which only the woman can choose on her own terms without external interference or influence. Reproductive autonomy requires that every pregnant woman has the intrinsic right to choose to undergo or not to undergo abortion without any consent or authorisation from a third party.

104. The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one's body. The consequences of an unwanted pregnancy on a woman's body as well as her mind cannot be understated. The foetus relies on the pregnant woman's body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman's body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman.

112. The right to decisional autonomy also means that women may choose the course of their lives. Besides physical consequences, unwanted pregnancies which women are forced to carry to term may have cascading effects for the rest of her life by interrupting her education, her career, or affecting her mental well-being."

[Emphasis Supplied]

37. The right of choice of abortion, which is held to be the constitutional right to personal autonomy, needs to be appreciated in the context of *The Medical Termination of Pregnancy Act, 1971* (MTP Act) which regulates and put reasonable restrictions on this right of a woman.

38. To examine whether termination of pregnancy by the Petitioner constituted an offence under Section 312 IPC, it would be pertinent to

first refer to Section 3 and 5 of MTP Act, which reads as under:

“3. When Pregnancies may be terminated by registered medical practitioners.-

(1) Notwithstanding anything contained in the Penal Code, 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.

S. 5. Sections 3 and 4 when not to apply -

(1) *The provisions of Sec. 4 and so much of the provisions of sub-section (2) of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.*

(2) *Notwithstanding anything contained in the Penal Code, 1860, the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified."*

[Emphasis Supplied]

39. Section 3 and Section 5 of MTP Act are the only Sections which allow termination of pregnancy. Section 3(2) states that where the length of pregnancy does not exceed upto 20 weeks, it can be terminated by a registered medical practitioner if he is of the opinion that continuance of pregnancy either would *involve risk to the life of the pregnant woman or grave injury to her physical or mental health*. If continuance of pregnancy is *harmful to the mental health of the pregnant woman*, then it is a good and legal ground to allow termination, if the pregnancy is not exceeding 20 weeks.

40. Whereas Section 3 provides a limit of termination upto a maximum of 20 weeks in the prescribed circumstances, Section 5 MTP Act stands on a different footing. It can be evoked at any point of time if the registered medical practitioner is of the opinion *in good faith* that termination of pregnancy is immediately necessary to save the life of the pregnant woman, irrespective of restriction of 12 or 20 weeks as mentioned in Section 3 MTP Act.

41. The golden thread running through the aforesaid Sections of MTP Act, is the concern for the *grave injury to her physical or mental health*, which needs to be assessed in terms of *woman's actual or reasonable foreseeable environment*. It would be doing great injustice to interpret "*mental health*" in a narrow pedantic manner, if it is interpreted as a physiological or neurological condition. Mental health issues may have their genesis in psychological and difficult situations a woman may find herself, during the given phase of life. The guiding light for correct interpretation is the phrase *woman's actual or reasonable foreseeable environment, as finds mention in Section 3(3) of the MTP Act*, which has greater nexus to the aspect of mental health as compared to the physical health.

42. The harsh reality of this misogynistic world cannot be ignored while considering the mental trauma of a woman facing marital discord, which gets compounded many times if she is pregnant. Not only is she left to fend for herself, but almost always is left to shoulder the responsibility of bringing up a child single handedly, with no support forth coming from any source. It is *only a woman who suffers*. Such pregnancy brings with it insurmountable difficulties, leading to grave mental trauma.

43. This aspect of mental trauma arising due to marital discord was succinctly stated by the High Court of Bombay in the case of *High Court on its Own Motion v. State of Maharashtra*. It took an expansive approach while considering the harm and the health of a pregnant woman and observed, "*the mental health can deteriorate if it is forced or is unwanted pregnancy*". It was further observed that a woman irrespective of her marital status, can be pregnant either by choice or it can be an unwarranted pregnancy. Wanted pregnancy is shared equally, but when it is an accident or unwanted, *then the man may not be there to share the burden but it would only be the woman on whom the burden shall fall*. There are social, financial, and other aspects immediately attached to the pregnancy of a woman, and if pregnancy is unwarranted, it can have serious repercussions. *It undoubtedly affects the mental health*. The law makers have taken care of helpless plight of a woman and have enacted Section 3(2)(b)(i) by incorporating the words "*grave injury to her mental health*". It is mandatory that the registered medical practitioner while forming opinion of necessity of termination of pregnancy, must take into account whether it *is injurious to her physical or mental health*. While doing so, the woman's actual or reasonable foreseeable environment, may be taken into account.

44. While highlighting that a woman's decision to terminate a pregnancy, it was noted that *often it is the only way out of a very difficult situation for a woman*. It is a carefully considered decision taken by a woman, who fears that the welfare of the child and of the other members of the household that she is obliged to take care of with her limited financial and other resources, may be compromised by the birth of a child. *These are the decisions taken by responsible women who have few other options*. If a woman does not want to continue with the pregnancy, then forcing her to do so represents the violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health.

45. It was highlighted in *High Court in its own motion v. State of Maharashtra* (supra) that women may be in different situations; she may be a working woman or homemaker or a prisoner; however, they all form one common category of a pregnant women. They all have

same rights in relation to their pregnancy. It was observed that Section 3(2)(b)(i) *bestows a precious right on a pregnant woman to say no to motherhood*. It is a right which has to be respected as a Fundamental Right under Article 21 of the Constitution of India as also a basic human right.

46. The right of exercise of reproductive choice, though is restricted by Medical Termination of Pregnancy Act, it also recognizes and protects her right to say no to the pregnancy, *if her mental or physical health is at stake*.

47. In the case of *XYZ v. Union of India*, (2019) 3 Bom CR 400, Division Bench of Bombay High Court in the same way, had interpreted the expression 'grave injury' in Section 3(2) of the Act. In the liberal sense, the question included the determination whether continuance of pregnancy would involve risk of injury to mental health of the pregnant woman. It was held that provisions of the Act had to be given purposive interpretation. Further, it was held that the aspect of a pregnant woman's actual or reasonable foreseeable environment has greater nexus to the aspect of mental health as compared to physical health.

48. In *X v. Principal Secretary, Health and Family Department, Govt. of NCT of Delhi*, (2023) 9 SCC 433, the Apex Court while dealing with whether Rule 3-B includes unmarried women, single women, or women without a partner under its ambit, delved into the aspects of the purposive interpretation of the statute, and transcending the institution of marriage as a source of rights. Further, the Apex Court took note of the modern atypical forms of familial relationships. It was held that as per the legislations, *both married and unmarried women have equal decisional autonomy to make significant choices regarding their own welfare*. Further, with regard to the object of the MTP Act, it was found that the whole tenor of the legislation is to provide access to safe and legal medical abortions to women, and being a beneficial legislation, the provisions of the MTP Act and MTP Rules must be imbued with a purposive construction. It was observed that the MTP Amendment Act 2021 extended the benefit of the statute to all women. In addition to the aforesaid discussion, the Apex Court further interpreted the term "injury to mental health" and held as follows:

"65. One of the grounds on the basis of which termination of pregnancy may be carried out is when the continuance of a pregnancy would involve risk of injury to the mental health of the woman. The expression "grave injury to her physical or mental health" used in Section 3(2) is used in an overarching and all-encompassing sense. The two Explanations appended to Section 3 (2) provide the circumstances under which the anguish caused by a preanancy may be presumed to constitute a grave injury to the

mental health of a woman.

* * *

68. The expression "mental health" has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The World Health Organisation defines "mental health" as a state of "mental well-being that enables people to cope with the stresses of life, realise their abilities, learn well and work well, and contribute to their community". [World Health Organisation, "Promoting Mental Health : Concepts, Emerging Evidence, Practice (Summary Report)" (2004).] The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context. Our understanding of the term "mental health" cannot be confined to medical terms or medical language, but should be understood in common parlance. The MTP Act itself recognises the need to look at the surrounding environment of the woman when interpreting injury to her health. Section 3(3) states that while interpreting "grave injury to her physical or mental health", account may be taken of the pregnant woman's actual or reasonably foreseeable environment. The consideration of a woman's "actual or reasonably foreseeable environment" becomes pertinent, especially when determining the risk of injury to the mental health of a woman."

[Emphasis Supplied]

49. In discussing the right to dignity in terms of the MTP Act, it was observed that:

"114. A woman can become pregnant by choice irrespective of her marital status. In case the pregnancy is wanted, it is equally shared by both the partners. However, in case of an unwanted or incidental pregnancy, the burden invariably falls on the pregnant woman affecting her mental and physical health. Article 21 of the Constitution recognises and protects the right of a woman to undergo termination of pregnancy if her mental or physical health is at stake. Importantly, it is the woman alone who has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo an abortion.

115. The right to dignity encapsulates the right of every individual to be treated as a self-governing entity having intrinsic value. It means that every human being possesses dignity merely by being a human, and can make self-defining and self-determining choices. Dignity has been recognised as a core component of the right to life and liberty under Article 21.

116. If women with unwanted pregnancies are forced to

carry their pregnancies to term, the State would be stripping them of the right to determine the immediate and long-term path their lives would take. Depriving women of autonomy not only over their bodies but also over their lives would be an affront to their dignity. The right to choose for oneself — be it as significant as choosing the course of one's life or as mundane as one's day-to-day activities — forms a part of the right to dignity. It is this right which would be under attack if women were forced to continue with unwanted pregnancies.

122. In the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the State. The right of every woman to make reproductive choices without undue interference from the State is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women."

[Emphasis Supplied]

50. Therefore, from the aforesaid discussion, it emerges that the mental trauma that a woman facing marital discord, can cause severe mental health issues leading to both, physical and mental harm, which cannot be brushed aside lightly and must be considered in the right perspective, in the given circumstances.

51. This significant concern has found its way into the MTP Act by way of a recent amendment to Rule 3-B by a Medical Termination of Pregnancy (Amendment) Rules, 2021, which reads as under:—

"3-B. Women eligible for termination of pregnancy up to twenty-four weeks.

The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely-

- (a) survivors of sexual assault or rape or incest;*
- (b) minors;*
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);*
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];*
- (e) mentally ill women including mental retardation;*
- (f) the foetal malformation that has substantial risk of being*

incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government."

52. Despite the enactment of MTP Act, number of hurdles continued to prevent full access to safe and legal abortions, pushing women to avail of clandestine, unsafe abortions. These barriers include insufficient infrastructural facilities, lack of awareness, social stigma, and failure to ensure confidential care. In some situations, unmarried women face particular barriers due to gender stereotypes about a women's sexual autonomy outside marriage. These barriers are a serious impediment and deter a woman to seek safe and legal abortions and also become a major contributory factor to delay in accessing abortion services.

53. By framing Rule 3-B, the legislature addressed the mischief, so to speak of a woman being unable to access abortions when their lives underwent significant changes impacting their physical and mental health. The common thread running through each of the categories of the woman mentioned in Rule 3-B, is that the woman is in unique and often difficult circumstances with respect to her physical, social, mental or financial health. This Rule is based on an acknowledgment of reality that survivors of offence may face immense stigma if and when they share the fact of their assault with others including family members.

54. In order to avail the benefit of Rule 3-B(a), a woman need not necessarily *seek recourse to formal legal proceedings* to prove the factum of sexual assault, rape or incest. Neither Explanation 2 to Section 3(2) nor Rule 3-B(a) require that the offender be tried under IPC or any other criminal law for the time being in force, before a pregnant woman can access an abortion.

55. Rule 3-B(c) states that a "*change in the marital status during the ongoing pregnancy (widowhood and divorce) renders women eligible for termination of their pregnancy under Section 3(2)(b) of the MTP Act.*" The impact of the continuance of an unwanted pregnancy on a woman's physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3-B(c) is comparable to the rationale for Rule 3-B (g) i.e. a change in a woman's material circumstances during the ongoing pregnancy.

56. Rule 3-B(c) is based on the broad recognition of the fact that a change in the marital status of a woman often leads to a change in her material circumstances which may arise when a married woman divorces her husband or when he dies, as is recognised in the examples provided in parenthesis in Rule 3-B(c).

57. When a woman separates from or divorces her partner, it may be that she is in a different and possibly less advantageous position financially. There is also a likelihood that a woman is abandoned by her family or a partner. She may no longer have the financial resources to raise a child. Moreover, a woman in this situation, may not be prepared to raise a child as a single parent or by co-parenting with her former partner.

58. Pertinently, Rule 3-B does not enumerate all the potential changes that a woman's material circumstances may undergo. It merely specifies some of the potential changes to a woman's material circumstances, in Clauses (c), (f) and (g). It is evident that it is not the intention of the legislature to restrict the benefit of Section 3(2)(b) and Rule 3-B only to women who may be confronted with a material alteration in the circumstances of their lives in the limited situations enumerated in Rule 3-B. Rather, the benefit granted by this Rule must be understood as extending to all women who undergo a change of material circumstances.

59. The right of a woman who is having a marital discord, to terminate the pregnancy was considered by the High Court of Kerala at Ernakulam in the case of *X v. Union of India*, W.P.(C) No. 29402/2022, decided on 26.09.2022 wherein after referring the Rule 3-B, it was held that in terms of the Rule, a woman undergoing marital discord is entitled to the termination of pregnancy; more so, as the MTP Act does not contain any proof requiring a woman to obtain the husband's permission for termination of pregnancy. The reason is that it is a woman who bears the stress and strain of the pregnancy and the delivery. A woman who was undergoing marital discord was, therefore, allowed to terminate the pregnancy.

60. Similar aspect came up for consideration before High Court of Madhya Pradesh at Indore in *X v. State of Madhya Pradesh* (supra), which was decided on 23.06.2023 wherein also the married woman was facing matrimonial litigation and cases under Section 498A, 294, 323 IPC and Section 3 and 4 of Dowry Prohibition Act, 1961. She sought termination of pregnancy of 16 weeks. The High Court after referring the case of *Principal Secretary, NCT of Delhi* (supra) and the decision in *X v. Union of India* (supra), W.P.(C) No. 29402/2022, allowed the woman to let the pregnancy be terminated.

61. In the present case as well, the lady was 14 weeks pregnant, when she took the decision of terminating the pregnancy on account of marital discord, as is mentioned in the OPD Card dated 16.08.2022.

62. The main contention raised by the Respondent/husband was that till that date, they were living together and there was no marital discord. It is only subsequently that the Petitioner left the matrimonial

home and the decision of her getting separated from the husband, got manifested. Since on the day she gave her consent for pregnancy, there existed no marital discord, she cannot place reliance on the MTP Act and the Rules framed therein.

63. While the marital discord may not have manifested itself till then, but from the reasons given by the Petitioner in the OPD Card, it is evident that she already felt the stress of marriage and had taken a decision to separate from the husband. The marital discord cannot be overstretched to interpret that it becomes applicable only after the parties have separated and litigation has commenced.

64. The very fact that the woman was stressed and felt that there was a marital discord, created a situation where such stress was likely to impact her mental health and therefore, she was competent to seek her abortion. The concerned Doctor also mentioned in the OPD Card that in view of the judgments of September, 2022, abortion cannot be denied and she went ahead with the abortion.

Conclusion:

65. In the light of aforesaid discussion, when the Apex Court in its aforementioned judgments, has recognized the autonomy of a woman to seek abortion in the situation of a marital discord which can impact her mental health, and also the provision of Section 3 MTP Act and the Rules framed therein, it cannot be said that an offence under Section 312 IPC was committed by the Petitioner.

66. The Order of learned ASJ upholding the Order of the learned MM is therefore, set aside and the Petitioner is discharged.

67. The Petition is accordingly allowed and the pending Applications are disposed of accordingly.

§ 2026 : DHC : 52

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