

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17060-2021

Date of decision : 07.12.2022

Satnam Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Gopal S. Nahel, Advocate
for the petitioner.

Mr. Jaiteshwar Singh, AAG, Punjab.

PANKAJ JAIN, J.

Petitioner has approached this Court by way of present petition filed under Section 482 Cr.P.C. seeking quashing of FIR No.357 dated 12.12.2020, registered for the offence punishable under Section 309 IPC, at Police Station Sadar Dhuri, District Sangrur.

2. The matter relates to attempt of suicide by the petitioner by consuming poisonous spray as he allegedly felt rejected in a love affair. As per the statement of the petitioner on the basis of which the FIR was registered, he claimed to be in friendship with a girl, who was pressuring to marry him. As per him, brothers of the girl picked up a quarrel with him which led to a dispute which was later on compromised before with police personnel at police post Ranike. He claims that despite such compromise, the family members of the girl kept on threatening him and feeling harassed. He consumed pesticide.

3. Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the FIR as the family of the girl was against

this relationship. Reliance is being placed upon Section 115 of the Mental Healthcare Act, 2017 to contend that suicide survivors should not be tried and punished under IPC. In order to buttress his arguments, counsel for the petitioner has relied upon '*Aruna Ramchandra Shanbaug vs. Union of India and others*' reported as **2011 (4) SCC 454**. Counsel further contends that even as per the reply filed on behalf of the State, the Board of Doctors constituted to examine the petitioner found that he was reported to have physio social stress at the time he consumed poison.

4. State counsel on the other hand submits that herein the petitioner was not under any stress and thus provisions of Section 115 of the Mental Healthcare Act (hereinafter referred to as '2017 Act') will not be attracted.

5. I have heard counsel for the parties and have gone through the records of the case.

6. In the considered opinion of this Court, the primary question that arises for the consideration of this Court is whether the prosecution of the petitioner can be allowed to continue in the background of Section 115 of the 2017 Act or not.

7. The provision as contained in Section 309 IPC has remained under debate for last many decades. As early as in the year 1970-71 Act, Law Commission of India in its 42nd report recommended the deletion of Section 309 IPC. In 1978-79, the recommendation was virtually accepted. However, the amendment could be brought Lok Sabha was dissolved in 1979 leading to lapse of the Bill. Supreme Court in ***P. Rathinam vs. Union of India (1994) 3 SCC 394*** held provision under Section 309 IPC unconstitutional. However, the same was held to be not

good law by five Judges Bench of Supreme Court in *Gian Kaur vs. State of Punjab (1996) 2 SCC 648*. The matter was again seriously debated before the Apex Court in *Common Cause (A Registered Society) vs. Union of India and another (2018) 5 SCC 1* wherein the Apex Court observed as under:-

“xx xx xx

366. This Court's holding in *Gian Kaur* that the right to life does not include the right to die in the context of suicide may require to be revisited in future in view of domestic and international developments pointing towards decriminalisation of suicide. In India, the Mental Healthcare Act 2017 has created a "presumption of severe stress in cases of attempt to commit suicide". Section 115(1) provides thus:

"115. Presumption of severe stress in case of attempt to commit suicide.- (1)

Notwithstanding anything contained in Section 309 of the Indian Penal Code (45 of 1860) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code."

Under, the Act also mandates the Government to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence. Section 115 begins with a non-obstante provision, specifically with reference to Section 309 of the Penal Code. It mandates (unless the contrary is proved by the prosecution) that a person who attempts to commit suicide is suffering from severe stress. Such a person shall not be tried and punished under the Penal Code.

Section 115 removes the element of culpability which attaches to an attempt to commit suicide under Section 309. It regards a person who attempts suicide as a victim of circumstances and not an offender, at least in the absence of proof to the contrary, the burden of which must lie on the prosecution. Section 115 marks a pronounced change in our law about how society must treat an attempt to commit suicide. It seeks to align Indian law with emerging knowledge on suicide, by treating a person who attempts suicide being in need of care, treatment and rehabilitation rather than penal sanctions.”

8. In view of the aforesaid observation made by Apex Court and from bare perusal of Section 115 of 2017 Act, it can be safely construed that the same has overriding effect over Section 309 IPC and the same creates bar on prosecution of a suicide victim. Present case relates to a young boy having turbulent relationship trying to take his own life.

9. In the considered opinion of this Court, Section 115 of 2017 Act saves the petitioner from prosecution. Consequently, the present petition is allowed. FIR No.357 dated 12.12.2020, registered for the offence punishable under Section 309 IPC, at Police Station Sadar Dhuri, District Sangrur is hereby quashed.

(PANKAJ JAIN)
JUDGE

07.12.2022

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

No