2025:KER:25616

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

CRL.MC NO. 537 OF 2024

CRIME NO.1476/2022 OF Ernakulam Central Police Station, Ernakulam

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.376 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, ERNAKULAM

PETITIONER:

MARY DENIL ALIAS ASHA ,
W/O. DENIL FRANCIS EDWARD,
AGED 37 YEARS
ANJALIKODUVELI. PARAMBIL HOUSE, PUSHPAKA ROAD,
VADUTHALA,ERNAKULAM, PIN - 682023

BY ADVS.
K.L.JOSEPH
P.SAREENA GEORGE
JOBY KURIAKOSE T.J

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RESPONDENTS:

1 **STATE OF KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

2 **STATION HOUSE OFFICER,**
ERNAKULAM CENTRAL POLICE STATION,KOCHI,
ERNAKULAM, PIN - 682018

OTHER PRESENT:

SRI. M.C. ASHI, PP.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24.02.2025, THE COURT ON 03.03.2025 PASSED THE FOLLOWING:

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V.G.ARUN, J

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Crl.M.C.No.537 of 2024

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Dated this the 3rd day of March, 2025

ORDER

Petitioner is the accused in C.C.No.376 of 2023 pending on the files of the Judicial First Class Magistrate Court - II, Ernakulam.

The case originated from Crime No.1476 of 2022 registered at the Ernakulam Central Police Station for the offence punishable under Section 309 of IPC. The crime was registered on the allegation that, at about 10:30 am on 04.11.2022, petitioner, with intent to commit suicide along with her two children aged 11 and 9, jumped from the terrace of her house, resulting in injuries to herself and the children. Petitioner is seeking to get the criminal proceedings against her quashed, on the ground that she was under severe mental

stress when the incident occurred and cannot therefore be prosecuted under Section 309 of IPC.

2. Learned Counsel for the petitioner contended that even if the allegation of attempt to commit suicide is accepted as true, petitioner cannot be prosecuted and punished in view of the presumption of her being under severe stress and consequential prohibition contained in Section 115(1) of the Mental Healthcare Act, 2017 ('the Act' for short). It is submitted that the medical records would show that the petitioner was harbouring a suspicion that her neighbours were intent on harming her family. The petitioner had, in fact, submitted a complaint raising such allegation to the police on 02.11.2022. The fear psychosis had prompted her to jump from the terrace, unmindful of the consequence. Learned Counsel submitted that, the Law Commission, in its 42nd Report submitted way back in 1970-1971 had recommended deletion of the offence of attempt to commit suicide from the IPC. Unfortunately, the bill passed in that regard was not passed as

the Parliament got dissolved. Later, in **P.Rathinam v. Union of India and Another** [(1994) 3 SCC 394], even though a two judge Bench of the Supreme Court struck down Section 309 of IPC as unconstitutional, in **Gian Kaur v. State of Punjab** [(1996) 2 SCC 648], a five judge Bench overruled the decision. Thereafter, in **Common Cause (A registered Society) V. Union of India and Another**, [(2018) 5 SCC 1], the Supreme Court again recommended decriminalising attempt to commit suicide. Relying on the decisions in **Simi C.N. v. State of Kerala** [ILR 2022 (2) Ker. 798] and **Leby Sajeendran v. State of Kerala** [2024 (6) KLT 81], it is contended that, after taking note of the presumption and prohibition contained in Section 115(1) of the Act, this Court has quashed the proceedings against similarly placed accused.

3. Learned Public Prosecutor submitted that, in spite of the suggestion in **Common Cause** (supra), Section 309 continued in the Penal Code until the Code itself was repealed by the Bharatiya Nyaya Sanhita, with effect from 01.07.2024. It

is pointed out that as per Section 226 of BNS, attempt to commit suicide with intent to compel or restrain the exercise of lawful power is still a punishable offence. According to the Public Prosecutor, the question whether the prosecution succeeded in discharging its burden of proving that the petitioner was not under severe mental stress when she attempted to commit suicide is dependant upon the evidence to be tendered and the prosecution cannot be pre-empted from discharging its burden by quashing the further proceedings.

4. Before proceeding to decide the question of law involved, it will be beneficial to sift through the medical records and the statements of witnesses. In Annexure A3 discharge summary dated 08.11.2022, the Doctor has observed that the patient was not willing to undergo the required procedure when she was admitted after the fall and had to be shifted back to the room. Only after psychiatry consultation, lower lip debridement and primary repair under RA could be done. The discharge summary reveals that the petitioner was advised to

report for review in psychiatry OPD after 10 days and in the doctor's progress note dated 18.04.2023, it is observed that the patient had paranoid ideations earlier and had committed the act because of her delusions and suspicion that she and her children were being followed by someone. The later progress note dated 26.04.2023 also contains an observation that the petitioner is having psychotic disorder and is still harbouring persecutory delusions of being followed and being under the surveillance of somebody. Apart from the above, in their Section 161 statements, petitioner’s parents and husband have consistently stated that the petitioner was under constant fear and tension about an ongoing quarrel between her husband and their neighbours, and used to get worked up for even small issues. Pertinently, none of the witnesses stated that the petitioner was in a normal state of mind when she attempted to commit suicide. In this context, it will be profitable to read the definition of mental illness in Section 2(s) of the Mental Healthcare Act, extracted hereunder for easy reference;

> "(s) "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;"

5. The above expansive definition of mental illness takes in substantial disorder of thinking, mood and perception that grossly impairs judgment, behaviour, capacity to recognise reality etc. The petitioner's medical records also indicate substantial disorder of thinking that had grossly impaired the petitioner's judgment and capacity to recognise reality. Being so, the presumption of severe stress mentioned in Section 115 of the Act will get attracted. Being contextually relevant, Section 115 is extracted below;

> "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.
> (2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide."

6. As far as the the impact of Section 115(1) of the Act on Section 309 of IPC is concerned, much deliberation is not required as there are earlier decisions on the issue. In **Common Cause** (supra), the Apex Court noted that Section 115(1) of the Mental Healthcare Act removes the element of culpability attached to an attempt to commit suicide under Section 309 and considers the person who attempted suicide as a victim of circumstances and not an offender.

7. In **Simi C.N.**(supra), referring to the findings in **Common Cause** (supra) as also the judgments of the Orissa and Himachal Pradesh High Courts on the point, the learned Single Judge held as under;

> *"15. S.115 of the Act saves the act of the petitioner from the penal provision. I am in respectful agreement with the observations made by the Orissa and Himachal Pradesh High Courts and therefore, the proceeding, if allowed to continue, is a clear abuse of the process of Court."*

8. In **Leby Sajeendran** (supra), not only was the legal position reiterated, but the learned Single Judge went one step ahead, by holding that the Mental Healthcare Act being a beneficial piece of legislation, can be given retrospective effect. The relevant portion of that judgment reads as under;

> "However, it has also been held that where a benefit is conferred by legislation, the rule against the retrospective construction is different. If a legislation confers benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving a purposive construction, would warrant it to be given a retrospective effect. The doctrine of fairness is a relevant factor to construe a statute conferring a benefit in the context of it to be given a retrospective operation. Where a law is

> enacted for the benefit of a community as a whole, even in the absence of a provision, the statute may be held to be retrospective in nature.
>
> 10. There can be no doubt that MHA is a beneficial legislation and so the benefits contained therein require to be extended to the entire class of persons for whose benefit it was enacted. As it is a beneficial piece of legislation, a retrospective effect can be given to the same."

9. Based on the above reasoning, further proceedings against the petitioner therein, with respect to an occurrence on 10.05.2016 was quashed by extending the benefit of Section 115(1) of the Mental Healthcare Act that had come into effect only on 07.07.2018.

10. Another important decision on the point is that of the Division Bench in **Sharanya V. State of Kerala** (2025 SCC OnLine Ker.1201). Therein, the prosecution case is that, on 01.12.2010, at about 10 pm, the accused murdered her son Sreehari aged 3¾ months, by smothering him with her hands and thereafter, attempted to commit suicide by inflicting cut

injuries on her body, with a steel blade. The accused was therefore charge sheeted for the offences punishable under Sections 302 and 309 of IPC. The Division Bench, after careful analysis of the relevant provisions, explicitly held that Section 115 of the Mental Healthcare Act creates an embargo in trying and punishing a person who had attempted to commit suicide for the offence under Section 309 IPC or for any other offence under IPC committed in the course of the same transaction, unless it is proved that the person accused was not under severe stress.

11. Thus, Section 115(1) of the Mental Healthcare Act raises a presumption that the accused had attempted to commit suicide under severe mental stress and the burden to prove otherwise is upon the prosecution. In the petitioner's case, there is sufficient proof to presume that the petitioner was under severe mental stress when she attempted to commit suicide. Being so, the prohibition under Section 115(1) of the Mental Healthcare Act will apply in all fours.

For the aforementioned reasons, the Crl.M.C is allowed. Annexure A 1 final report and all further proceedings in C.C.No.376 of 2023 on the files of the Judicial First Class Magistrate Court-II, Ernakulam, as against the petitioner, is quashed.

sd/-

V.G.ARUN, JUDGE

sj

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APPENDIX OF CRL.MC 537/2024

PETITIONER ANNEXURES

Annexure A 1	**CERTIFIED COPY OF THE FINAL REPORT IN C.C.NO. 376/2023 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT - 11 ERNAKULAM**
Annexure A 2	**TRUE COPY OF THE COMPLAINT DATED 02.11.2022 SUBMITTED BY THE .PETITIONER BEFORE THE SHO, ERMAKULAM NORTH POLICE STATION**
Annexure A 3	**THE DISCHARGE CERTIFICATE OF THE PETITIONER DATED 08.11.2022 ISSUED FROM THE MEDICAL TRUST HOSPITAL**
Annexure A4	**THE TRUE COPY OF CASH BILL DATED 18.11.2022 ISSUED FROM MEDICAL TRUST HOSPITAL**
Annexure A5	**TRUE COPY OF THE DOCTOR PROGRESS NOTE DATED 18.04.2023 ISSUED FROM ASTER MEDICITY**
Annexure A6	**TRUE COPY OF THE DOCTOR PROGRESS NOTE DATED 26.04.2023 ISSUED FROM ASTER MENDICITY**
Annexure A7	**TRUE COPY OF PRESCRIPTION DATED 16.05.2023 ISSUED FROM ASTER MEDICITY**

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Annexure A8	**TRUE COPY OF THE PRESCRIPTION DATED 14.08.2023 ISSUED FROM ASTER MEDICITY**
Annexure A9	**TRUE COPY OF THE PRESCRIPTION DATED 16.11.2024 ISSUED FROM ASTER MEDICITY**